(18)

No. 00-1737-CFX
Status: GRANTED

Title: Watchtower Bible and Tract Society of New York, Inc., et al., Petitioners
v.
— Village of Stratton, et al.

Docketed:
May 21, 2001

Court: United States Court of Appeals for the Sixth Circuit

Counsel for petitioner: Polidoro,Paul D.

Counsel for respondent: Cantor,Abraham

Entry	Date	Note	Proceedings and Orders
1	May 18 2001	G	Petition for writ of certiorari filed. (Response due June 20, 2001)
2	Jun 20 2001		Brief of respondents Village of Stratton, Ohio, and John Abdalla in opposition filed.
3	Jul 3 2001		DISTRIBUTED. September 24, 2001 (Page 28)
4	Jul 6 2001	X	Reply brief of petitioners Watchtower Bible and Tract Society of New York, Inc., et al. filed.
6	Oct 1 2001		REDISTRIBUTED. October 5, 2001 (Page 27)
7	Oct 1 2001		Record requested -- SOC.
8	Oct 10 2001		REDISTRIBUTED. October 12, 2001 (Page 16)
9	Oct 12 2001		Record filed.
		*	Record of proceedings U.S.C.A. for the Sixth Circuit (1 binder).
10	Oct 15 2001		Petition GRANTED. limited to Question 2 presented by the petition. SET FOR ARGUMENT February 26, 2002. **********
11	Nov 6 2001		Record filed.
		*	Record proceedings from the U.S.D.C., Southern OH, Eastern Division (1 box).
16	Nov 27 2001		Brief amicus curiae of Brennan Center for Justice filed.
17	Nov 28 2001		Joint appendix filed.
12	Nov 29 2001		Brief amicus curiae of Independent Baptist Churches of America filed.
13	Nov 29 2001	G	Motion of Electronic Privacy Information Center, et al. for leave to file a brief as amici curiae filed.
14	Nov 29 2001		Brief amicus curiae of Center for Individual Freedom filed.
15	Nov 29 2001		Brief amicus curiae of Commonwealth of the Northern Mariana Islands filed.
18	Nov 29 2001		Brief of petitioners Watchtower Bible and Tract Society of New York, Inc., et al. filed.
20	Nov 29 2001	G	Motion of Church of Jesus Christ of Latter-day Saints for leave to file a brief as amicus curiae filed.
22	Nov 29 2001	X	Brief amici curiae of RealCampaignReform.Org, Inc., et al. (TBP) filed.
21	Dec 14 2001		CIRCULATED.
23	Dec 27 2001		Order extending time to file respondents' brief on the merits to and including January 9, 2002.
33	Jan 8 2002	X	Brief amicus curiae of Ohio Municipal League filed.
24	Jan 9 2002	X	Brief amici curiae of Ohio, et al. filed.
25	Jan 9 2002	X	Brief of respondents Village of Stratton, Ohio, et al.

2 pp

No. 00-1737-CFX

Entry	Date	Note	Proceedings and Orders
			filed.
26	Jan 9 2002	X	Brief amici curiae of International Municipal Lawyers Association, et al. filed.
27	Jan 22 2002		Motion of Electronic Privacy Information Center, et al. for leave to file a brief as amici curiae GRANTED.
28	Jan 22 2002		Motion of Church of Jesus Christ of Latter-day Saints for leave to file a brief as amicus curiae GRANTED.
29	Jan 24 2002	G	Motion of Ohio, et al. for leave to participate in oral argument as amici curiae and for divided argument filed.
31	Feb 12 2002	X	Reply brief of petitioners Watchtower Bible and Tract Society of New York, Inc., et al. filed.
30	Feb 15 2002		Motion of Ohio, et al. for leave to participate in oral argument as amici curiae and for divided argument GRANTED.
32	Feb 15 2002		Letter from counsel for the respondents received and distributed.
34	Feb 26 2002		ARGUED.

(1)

Supreme Court ...
FILED

No. 00-

01737 MAY 18 2001

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Under the Free Exercise of Religion, Free Speech, and Free Press Clauses of the First Amendment to the United States Constitution, must a municipal ordinance regulating uninvited peddling and solicitation be narrowly tailored to the least restrictive means necessary to achieve an actual compelling governmental interest, when that ordinance requires religious ministers to obtain permits prior to door-to-door communication of their religious beliefs and dissemination of religious literature at no charge?

2. Does a municipal ordinance that requires one to obtain a permit prior to engaging in the door-to-door advocacy of a political cause and to display upon demand the permit, which contains one's name, violate the First Amendment protection accorded to anonymous pamphleteering or discourse?

STATEMENT PURSUANT TO RULE 29.6

Petitioner Watchtower Bible and Tract Society of New York, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock, in that it is a non-stock corporation.

Petitioner Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock, in that it is a non-stock corporation.

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Watchtower Bible and Tract Society of New York, Inc., and Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc., Petitioners, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (6th Cir. 2001) (App. A). The opinion of the United States District Court for the Southern District of Ohio is reported at *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 61 F. Supp. 2d 734 (S.D. Ohio 1999) (App. B).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on February 20, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The First Amendment to the Constitution of the United States provides, in relevant part: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press . . ."

This case involves Ordinance No. 1998-5, "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property in the Village of Stratton, Ohio, and Amending Ordinance No. 1996-__ of the Ordinances of the Village of Stratton, Ohio." This is set forth in full in the Appendix. Petitioners did not challenge section 116.07 "Owner's/Occupant's Prohibition Against Entry" of the Ordinance.

STATEMENT OF THE CASE

Jehovah's Witnesses consider it part of their individual responsibility to follow Jesus' example and go from house to house to speak to people about the gospel of Christ, in imitation of Jesus himself going from door to door to teach people about his message. As part of their public ministry, they offer Bible-based literature to anyone who is interested in receiving it. Such literature is given free of charge, and is published by Watchtower Bible and Tract Society of New York, Inc., a not-for-profit, tax-exempt religious and charitable organization.

The Village of Stratton, Ohio, promulgated an "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property . . ." which requires anyone desiring to engage in door-to-door activity to obtain a permit from the Mayor. This permit is to be issued at no cost. This ordinance was the successor to a prior ordinance, which the Village revised after Watchtower disputed its applicability and constitutionality.

Ministers associated with the local congregation of Jehovah's Witnesses, the Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc., have experienced difficulties with

Village officials about their door-to-door ministry as far back as 1979. In the early 1990s, a Village policeman chased a group of Jehovah's Witnesses out of town, stating, "I could care less about your rights." (TR 58). The matter came to a head in 1998 when Stratton's Mayor personally confronted four Jehovah's Witnesses, who were driving out of the Village after having returned to speak with residents who had on previous occasions showed interest in having Bible-based discussions. After they advised the Mayor that they were "sharing Bible thoughts" (TR 77) with people, the Mayor told the Witnesses that they were not allowed to be in the Village, that people had moved to Stratton with the understanding that they would not be bothered by Jehovah's Witnesses, and that, if they had been men, he would have taken them and put them in jail. (TR 77). The Village shortly thereafter amended its Ordinance.

The Village's Ordinance became the subject of an action brought in the District Court for the Southern District of Ohio by the Congregation and Watchtower. The jurisdiction of the district court was invoked under 28 U.S.C. §§ 1331, 1343, 2201 and 2202 in that the validity of the Village of Stratton's Ordinance[1] was challenged under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1985.

On August 18, 1999, U.S. District Court Judge Edmund A. Sargus issued a final order, holding that the Ordinance applied to Jehovah's Witnesses in that they were "canvassers" who visited homes in neighborhoods for the purpose of

1. Petitioners did not contest § 116.07 "Owner's/Occupant's Prohibition Against Entry," by which a resident can post a "No Solicitation" sign and thereafter register with the Mayor his desire not to be solicited.

"explaining" their "'cause,' the Gospel of Jehovah." (App. B, 39a-40a). However, the court held three provisions to be improper. Section 116.03(b)(5) of the Ordinance requires an applicant to list the specific address of each private residence he intends to visit. Although agreeing that this provision is onerous, the court held that it was proper, because the Village agreed to provide a list of addresses, which could be appended to the permit application. Section 116.03(b)(6) requires "[s]uch other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." (App. B, 41a). The court held this to be satisfied by allowing one to note his participation in "the Jehovah's Witness ministry." (App. B, 42a). Section 116.05 limited door-to-door activity to between 9:00 a.m. to 5:00 p.m., even with a permit. The district court found this to be an invalid restriction of a canvasser's right to visit homes "during reasonable hours" (App. B, 43a) and ordered the Ordinance modified to allow activity "to occur during reasonable hours of the day." (App. B, 44a).

Except for those three provisions, the court found all of the challenged provisions of the Ordinance to be "valid, content neutral governmental regulations designed for the safety and security of the Village residents." (App. B, 41a). The court was not willing to reach the conclusion that the Ordinance was not neutral because at least six separate solicitors for school fund-raisers "were granted permission to solicit within the Village outside the time limits." (App. B, 42a). However, the court did strike the listing "Jehovah [sic] Witnesses" in the Registration Form — noting that "[n]o other religious group is listed separately or singled out on this list. . . . Although the Registration Form is an

administrative form designed to facilitate compliance with the Ordinance, its language and its form must be content neutral." (App. B, 45a).

The Sixth Circuit affirmed, holding that the Ordinance was content neutral and of general applicability, and therefore was subject to intermediate scrutiny. It further held that Petitioners' alleging infringement of freedom of speech, free exercise of religion, and freedom of press did not serve to elevate the level of scrutiny.

The circuit court held that the Ordinance was not unconstitutionally overbroad in that its requirement to reveal one's name did not rise to a level of impinging anonymous political speech because canvassers revealed a portion of their identity in the act of going from door to door.

The circuit court also held that the Ordinance's use of the term "cause," in describing what speech was within its purview, was not unconstitutionally vague because it was not modified, but included all causes.

As to the free speech claims, the circuit court examined the Ordinance to determine if it was narrowly tailored to serve a significant government interest and left open ample alternatives for communication. It found that the government interests the Village sought to promote — protecting its residents from fraud and undue annoyance in their homes — were sufficiently significant. It also found the harm the Village sought to prevent — criminals passing as canvassers in order to defraud its residents — was a real threat. The court paid deference to the Village's predictive judgment in enacting the Ordinance to protect its residents against this anticipated harm. It also held that the Ordinance protected

privacy in that one could be penalized for ignoring a "No Solicitation" sign. As to fraud, the court held the Ordinance would assist the Village both in turning away individuals who were posing as Jehovah's Witnesses and in apprehending any individual committing fraud. Finally, the court held that several alternatives to door-to-door canvassing were available — specifically, stores, street corners, restaurants, parks, and other public forums.

As for the free exercise claims, the court held that the Village Ordinance was not a flat prohibition on the dissemination of ideas and did not leave discretion in granting a permit to the Mayor. It also found the law to be content neutral, holding that reference to Jehovah's Witnesses was not part of the text of the Ordinance but part of a form, which language was ordered removed by the district court. The court also found that the Mayor's statements that he would not grant Jehovah's Witnesses an exemption from the Ordinance's time restrictions did not compel a finding that he unequally applied the Ordinance because Jehovah's Witnesses never requested an exemption from the Ordinance's time restrictions. Finally, the court found the Ordinance to be of general applicability because it was not written to impose a burden only on conduct motivated by religious belief.

The court also denied Petitioners' request for an exemption from the Ordinance and affirmed the district court's award of attorneys' fees to Petitioners.[2]

2. On February 24, 2000, the district court issued an opinion and order awarding attorneys' fees (App. D, 49a) pursuant to finding Petitioners to be prevailing parties and substantially successful in their action in that the court enjoined the Village's discriminatory

(Cont'd)

The dissent agreed with the majority that the Ordinance was not unconstitutionally vague, did not violate free exercise rights of Jehovah's Witnesses, that intermediate scrutiny was the proper standard of review because the Ordinance was neutral on its face, and that the award of attorneys' fees was proper. However, the dissent disagreed with how intermediate scrutiny was applied and would have held that the Ordinance violates the First Amendment, because it burdens more speech than is necessary to further the Village's legitimate interests. The dissent was concerned that subjecting non-commercial solicitation to the Ordinance's permit requirements restricted a substantial amount of speech unrelated to fraud. Further, the dissent noted that the availability of other outlets for speech did not alleviate the special burden placed on door-to-door solicitation. In addition, the dissent felt that enforcing trespass laws was a less restrictive means in protecting homeowners from unwanted annoyance. Finally, the dissent stated that the Village failed to demonstrate either the reality of the harm or the efficacy of the restriction and would have held the Ordinance's permit requirement to be an unconstitutional infringement of Jehovah's Witnesses' First Amendment rights.

REASONS FOR GRANTING THE WRIT

More than any other religious group in the history of American jurisprudence, Jehovah's Witnesses have successfully relied upon this Court to safeguard their rights

(Cont'd)
form designed to implement the Ordinance, Jehovah's Witnesses no longer needed to provide a detailed description of their intended activities, and they would benefit both from the Village's concession to provide a list of all residents in town and by the removal of the 5:00 p.m. limit.

to free speech, free press, and freedom of worship against municipal efforts at prohibition or regulation. The Witnesses were, and are, motivated by their firmly held religious convictions: "Moreover, the Witnesses conscientiously objected to applying for a license; they thought the state had no right to license religious teaching." Douglas Laycock, *A Survey of Religious Liberty in the United States*, 47 Ohio St. L.J. 409, 419 (1986). Their efforts in the 1930s and 1940s achieved a restoration "to their high, constitutional position the liberties of itinerant evangelists who disseminate their religious beliefs and the tenets of their faith through distribution of literature." *Murdock v. Pennsylvania*, 319 U.S. 105, 117 (1943). As a result, legal conflicts between municipalities and the Witnesses regarding their public ministry ceased — being relegated to dim memory and law students' review of the constitutional underpinnings of First Amendment jurisprudence.

Comes now the Village of Stratton, Ohio. In passing an ordinance purportedly designed to address the prevention of consumer fraud and protection of residential privacy, it subjected the pure religious speech and press activity of Jehovah's Witnesses to the prior restraint of obtaining a permit, notwithstanding that the Witnesses engaged only in non-commercial speech and made literature published by Watchtower available free of charge to those interested in reading it.

Despite the unfortunate echo to a prejudiced past of Stratton's Mayor bragging that people move into his Village because they know they will be free from the message of Jehovah's Witnesses (TR77), the inference that it is his intent to satisfy their expectations, and his stated belief that no one in the Village wants to listen to Jehovah's Witnesses (TR129),

the circuit court upheld Stratton's permit scheme. The Sixth Circuit Court of Appeals determined that this Court's decision in *Employment Division, Department of Human Resources v. Smith*, 494 U.S. 872 (1990) dismantled the protection that this Court has long afforded the communication of religious beliefs. Thus arises a question that can only be answered by this Court: Are religious ministers engaged in a Scripturally based centuries-old practice of communicating their religious beliefs from door to door constitutionally equivalent to peddlers of merchandise, subject to the prior restraint of obtaining municipal permission to speak about the Bible or offer Bible-based literature at no cost?[3]

I. There exists a conflict among the circuits, which extends to the courts of last resort of several states, as to the applicable level of judicial scrutiny utilized to review the constitutionality of an ordinance that burdens activity involving the free exercise of religion in conjunction with freedom of speech and freedom of press.

Jehovah's Witnesses believe that they must perform a public ministry that includes talking to people at their residences about the Bible. It is among their deeply held religious convictions. The Bible-based literature published by Watchtower is distributed by individual Jehovah's Witnesses, who offer it free of charge to anyone who is interested.

3. It is instructive to note the influence of evangelical discourse in the genesis of the First Amendment's free exercise protection: "To determine the meaning of the religion clauses, it is necessary to see them through the eyes of their proponents, most of whom were members of the most fervent and evangelical denominations in the nation." Michael W. McConnell, *The Origins and Historical Understanding of Free Exercise of Religion*, 103 Harv. L. Rev. 1409, 1437 (1990).

The Village of Stratton insisted that its Ordinance, which requires individuals to obtain permits issued at no charge prior to engaging in door-to-door activity, applied to the public ministry of Jehovah's Witnesses. The Village took this position despite the Witnesses' non-commercial activity: they offered Bible-based literature without charge and did not seek donations while speaking with people from door to door. The Village persisted in its demand that the Witnesses obtain a permit despite being advised that it is against their religious beliefs to obtain a permit before conducting their ministry. Therefore, to them the Ordinance would act as a ban on their activity. Witness do, of course, obtain a permit to build their meeting places, to marry, to drive — their religious objection to obtaining permission arises only in the context of their public ministry. In fact, Jehovah's Witnesses have a long-standing history of explaining to municipalities and courts that asking for the State's permission, as to this specific Scripturally based activity, is against their religious beliefs. *Coleman v. City of Griffin*, 189 S.E. 427, 428 (Ga. Ct. App. 1936), *appeal dismissed*, 302 U.S. 636 (1937); *Lovell v. City of Griffin*, 303 U.S. 444, 448 (1938); *Schneider v. New Jersey*, 308 U.S. 147, 159 (1939); and *Tucker v. Randall*, 15 A.2d 324, 325 (N.J. 1940).

Before this case, no court has required Jehovah's Witnesses to obtain the permission of a mayor prior to engaging in the door-to-door communication of their religious beliefs. Before this case, no court has required Watchtower to disseminate its religious literature only through ministers who have obtained permission from a municipality prior to the door-to-door dissemination. The Sixth Circuit, when faced with Petitioners' contention that the Village Ordinance burdens their rights under the Free Exercise Clause of the First Amendment (Jehovah's

Witnesses' evangelical activity in going to individuals' residences), in conjunction with their rights under the Free Speech Clause (speaking about the Bible) and Free Press Clause (the dissemination of Watchtower's literature), held that this Court's decision in *Smith* mandated its subjecting the ordinance to intermediate scrutiny. (App. A, 10a-12a). It further held that "[u]nder recent Supreme Court precedent, a law that is content neutral and of general applicability does not violate an individual's free exercise rights." (App. A, 26a).

The circuit court also held that *Smith's* discussion of "hybrid rights" (App. A, 11a), rather than being a synthesized articulation of the long history of protection this Court has accorded Free Exercise claims raised in conjunction with other constitutional protections, was merely "dicta and therefore not binding." (App. A, 12a). The Sixth Circuit did not follow this Court's clear and direct statement of law:

> The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press.

(App. A, 11a-12a). In commenting upon this language from *Smith*, this Court left no doubt that the statement reflected settled law: "The only instances where a neutral, generally applicable law had failed to pass constitutional muster, the *Smith* Court noted, were cases in which other constitutional protections were at stake." *City of Boerne v. Flores*, 521 U.S. 507, 513-14 (1997).

The Sixth Circuit's reducing this Court's holdings to "dicta and therefore not binding" (App. A, 12a) is in direct conflict with the holdings of the Third, Eighth, Ninth, Tenth, and District of Columbia Circuit Courts of Appeals.[4] It also conflicts with the holding of a state in its circuit, the Supreme Court of Michigan,[5] as well as the courts of last resort of Alaska, Indiana, New Jersey, Vermont and Washington.[6] The confusion underlying this conflict is widely noted — and can only be resolved by this Court:

> Thus we postpone, perhaps serendipitously, but ineluctably, definitive application of *Employment Division v. Smith* (citation omitted), and its newly developed hybrid rights doctrine to what had been deemed a live controversy arising in one of the states of this circuit. As our three-judge panel opinion and dissent demonstrate, together with the decisions of our sister circuits, *Smith* itself is fraught with complexity both in doctrine and in

4. *Salvation Army v. Dept. of Cmty. Affairs of N.J.*, 919 F.2d 183 (3d Cir. 1990); *Cornerstone Bible Church v. City of Hastings*, 948 F.2d 464 (8th Cir. 1991); *Miller v. Reed*, 176 F.3d 1202 (9th Cir. 1999); *Swanson v. Guthrie Indep. School Dist. No. I-L*, 135 F.3d 694 (10th Cir. 1998); *Equal Employment Opportunity Comm'n v. Catholic Univ. of America*, 83 F.3d 455 (D.C. Cir. 1996).

5. *People v. DeJonge*, 501 N.W.2d 127 (Mich. 1993).

6. *Swanner v. Anchorage Equal Rights Comm'n*, 874 P.2d 274 (Alaska 1994), *cert. denied*, 513 U.S. 979 (1994); *City Chapel Evangelical Free Inc. v. City of South Bend*, 744 N.E.2d 443 (Ind. 2001); *South Jersey Catholic School Teachers Org. v. St. Teresa of the Infant Jesus Church Elementary School*, 696 A.2d 709 (N.J. 1997); *State v. DeLabruere*, 577 A.2d 254 (Vt. 1990); *First Covenant Church of Seattle v. City of Seattle*, 840 P.2d 174 (Wash. 1992).

> practice. (Citations omitted). Perhaps the Supreme Court will have an opportunity before the issue arises again in this circuit to refine its approach in this area in light of the experience of five circuits.

Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1147-48 (9th Cir. 2000) (en banc) (O'Scannlain, C. J., concurring), *cert. denied*, __ U.S. __, 121 S. Ct. 1078 (2001).[7]

In harmony with this preceding statement, the Sixth Circuit Court of Appeals expressly requested this Court's direction:

> Based in part upon the lack of an explanation from the Court, we declined to alter the standard of scrutiny for laws affecting hybrid rights until the Supreme Court provided guidance. The Court has yet to provide such guidance, and therefore, we adhere to our decision in *Kissinger* and continue to decline to alter the standard of scrutiny.

(App. A, 12a). It is vital that this conflict among the circuits on such a significant issue of First Amendment jurisprudence be resolved by this Court.

7. There are indications that the First, Second, and Fourth Circuits, as well as the Supreme Court of Minnesota, have disagreed in principle with the 6th Circuit. *Brown v. Hot, Sexy and Safer Prod., Inc.*, 68 F.3d 525 (1st Cir. 1995), *cert. denied*, 516 U.S. 1159 (1996); *Intercommunity Ctr. for Justice and Peace v. Immigration and Naturalization Serv.*, 910 F.2d 42 (2d Cir. 1990); *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 89 F.3d 174 (4th Cir. 1996), *cert. denied*, 519 U.S. 1111 (1997); *Hill-Murray Fed'n of Teachers, St. Paul, Minn. v. Hill-Murray High School, Maplewood, Minn.*, 487 N.W.2d 857 (Minn. 1992).

The Free Exercise Clause of the First Amendment is not a redundancy — nor did this Court's holding in *Smith* so render it. *Smith* in no way signaled a retreat from the protection accorded the communication of religious beliefs recognized in *Cantwell v. Connecticut*, 310 U.S. 296 (1940) and so well articulated in *Murdock v. Pennsylvania*, 319 U.S. 105, 108-9 (1943):

> The hand distribution of religious tracts is an age-old form of missionary evangelism — as old as the history of printing presses. It has been a potent force in various religious movements down through the years. This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands upon thousands of homes and seek through personal visitations to win adherents to their faith. It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits.

If Stratton had enacted an ordinance the effect of which was to require a priest, rabbi, or minister to obtain a permit to deliver a sermon to the congregation, it would be beyond peradventure that such an ordinance would be examined under the most exacting scrutiny that First Amendment jurisprudence could provide. Yet, the circuit court held that *Smith* required the ordinance to be subjected to merely "intermediate scrutiny" (App. A, 18a), which it defined as "narrowly tailored to serve a significant government interest

and left open ample alternatives for communication." (App. A, 18a). In so holding, the court noted that it would pay deference to "the predictive judgments of the government." (App. A, 18a). It also held that ample alternatives for communication did "not mean the least restrictive means of promoting the interest in question." (App. A, 19a).

The result of this lowered standard of scrutiny was a shifting of the burden of proof. Rather than deeming the ordinance "presumptively invalid," *Smith* at 888, and requiring the Village to overcome that presumption, the court showed deference to Stratton and its Mayor. The court was not troubled by — it did not even address — any of the Mayor's negative statements regarding Jehovah's Witnesses. The court did not explain how an inquiry into neutrality was not necessitated either by the district court's finding that Jehovah's Witnesses were the only religious group singled out by the Village in the administrative form or by the district court's comments that the "form must be content neutral." (App. B, 45a). The Mayor testified that he would not give a permit to Jehovah's Witnesses to go door to door after 5:00 p.m. because the Ordinance precluded activity after that time, although every non-Witness applicant who asked for an after-5:00 p.m. permit in fact received it. The court of appeals brushed this aside, stating that this was "not evidence of the purpose of the Village in promulgating the ordinance." (App. A, 11a). Despite this evidence of uneven enforcement, there was no inquiry by the court into whether the law was actually of general applicability.

The circuit court also ignored Watchtower's free press claim. As a publisher of literature, Watchtower is entitled to First Amendment protection. However, the circuit court made no attempt to reconcile its upholding Stratton's requirement

that a permit be obtained prior to dissemination of Watchtower's religious literature with this Court's holding in *Lovell v. City of Griffin*, 303 U.S. 444 (1938). In *Lovell*, this Court struck down an ordinance requiring Jehovah's Witnesses to obtain a permit prior to the dissemination of literature, noting: "The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'" *Id.* at 452. (Citations omitted.)

In holding that it was not required to examine Stratton's encumbrances on the communication of religious beliefs utilizing strict scrutiny, the circuit court did not require the Village to justify the Ordinance by showing a compelling governmental interest. Therefore, there was no recognition that many laws will not survive such scrutiny. *Smith* at 888. *See also Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993). Rather, the court looked to determine if the Ordinance promoted a "significant government interest." (App. A, 19a). Stratton proffered only two interests — prevention of consumer fraud, particularly against the elderly, and protecting residents' privacy. However, the court did not require the Village to demonstrate that consumer fraud practiced by people going from door to door in Stratton was a real, rather than conjectural, interest.[8]

8. "[T]he Government must present more than anecdote and supposition." *United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803, 822 (2000); "When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply 'posit the existence of the disease sought to be cured.' It must demonstrate that the recited harms are real, not merely conjectural . . ." *Turner Broad. Sys., Inc. v. Federal Communications Comm'n*, 512 U.S. 622, 664 (1994) (plurality opinion) (citation omitted).

The record contained no evidence that the Village ever experienced a single incident of consumer fraud related to door-to-door activity. In upholding the district court, the circuit court relied upon the testimony of the Mayor and Village solicitor, who were "aware of problems in other Ohio cities with door-to-door fraud," (App. A, 21a), its deference to the Village's "predictive judgments" (App. A, 18a), and the testimony of an Ohio State Assistant Attorney General, which was limited to opining that the Ordinance would be "helpful" in addressing the Village's interests. (TR 216).

A municipality cannot simply rely upon a proffered interest as if that interest were a talisman justifying whatever ordinance it seeks to enact. It has the burden to prove that there is a real problem to be addressed. *Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n*, 518 U.S. 604 (1996). Rather than requiring the Village to meet the burden of proof necessary to overcome the heavy presumption against the validity of a permit scheme that imposes a prior restraint on speech (*see Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992)), the court noted that the evidence of "criminals posing as canvassers in order to defraud its residents — is a real threat. While the evidence of this reality is by no means overwhelming, we believe it is sufficient." (App. A, 21a).

The record is devoid of evidence to support the decision of the circuit court. There is no evidence of legislative history (town council minutes) supporting why this ordinance was necessary. There is no evidence that drafting an ordinance for the purpose of preventing fraud in commercial speech could not have been drafted to regulate only commercial speech. There is no evidence establishing why it was necessary to regulate noncommercial speech. There is no

evidence that enforcing existing Ohio criminal statutes (Ohio Charitable Solicitation Act, Consumer Sales Protection Act, Home Sales Solicitation Act) was insufficient to address the Village's interest in preventing fraud. Finally, there is no evidence that section 116.07 of the Ordinance, which permits an owner/occupant of a residence who does not want any solicitation to register his address with the Village and post a "No Solicitation" sign on his property, is not an effective means to protect the Village's interest.[9] The court did not require the Village to explain, let alone justify, why these other remedies, more narrowly tailored to the interest of preventing fraud and less restrictive[10] of religious speech and the dissemination of religious literature, were not utilized.

The other governmental interest advanced by the Village was the protection of privacy. In drafting the Ordinance, the Village's solicitor believed that there is "a Constitutional right not to be annoyed in my own home." (TR 177-78). The circuit court held that the Village's asserted interest in privacy was sufficient to support intermediate scrutiny. However, in exercising intermediate scrutiny, the court focused on section 116.07 of the Ordinance, a section which has not been challenged in this litigation.

This case challenges the permit scheme established by Stratton. The court of appeals did not explain how the permit

9. Since Petitioners did not contest this portion of the Village ordinance, the district court did not address its constitutionality.

10. When appropriate, requiring use of a less restrictive means remains part of First Amendment jurisprudence. *See United States v. Playboy Entm't Group, Inc.*, 529 U.S. 803 (2000); *Denver Area Educ. Telecomm. Consortium, Inc. v. Fed. Communications Comm'n*, 518 U.S. 727 (1996). It also has relevance with respect to religious speech claims. *See generally Schneider v. N.J.*, 308 U.S. 147 (1939); *Martin v. City of Struthers*, 319 U.S. 141 (1943).

scheme advances the Village's purported interest in privacy. Whether the visitor does, or does not, possess a permit, the occupant of a residence would still receive an unexpected knock on the door.

This Court has never held that the homeowner has a right, in the absence of any posted notice, not to have his door knocked upon (let alone whether the government has any interest — significant, compelling, or otherwise — in protecting this "right"). Of course, the occupant of a residence has a right to post a "No Trespassing" sign to keep visitors off his property. However, the circuit court did not address why posting such a sign was not adequate to address a privacy interest, as this sign would apply to all.

Interestingly, the court of appeals did not explain how the Village's action was not violative of the real constitutional right of the homeowner abridged in this case — the right of those desiring to receive information. *Martin v. City of Struthers*, 319 U.S. 141, 149 (1943).

This case does not present individuals seeking to use religion as a blind to shield behavior deemed by society to be odious (*e.g.*, polygamy). It does not present a situation wherein religion is being used to evade compliance with governmental interests necessary to maintain the nation (*e.g.*, the payment of taxes). To the contrary, this case presents a situation in which the desired activity is that which is directly encompassed by the First Amendment — evangelizing, religious speech, and dissemination of literature. Jehovah's Witnesses do not contend that they are above the law, nor do they contend that a municipality must always yield to religion in all matters. They simply contend that when a municipality seeks to criminalize the exercise of First Amendment rights for not first obtaining that

municipality's permission, it must first do what it can to achieve its interests before it burdens that which the Constitution seeks to protect.

II. The Sixth Circuit's decision requiring individuals desiring to engage in anonymous door-to-door political communication to obtain a permit conflicts directly with *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999).

The decision by the circuit court permits a municipality to prohibit anonymous door-to-door political discourse or pamphleteering. Thus, the Sixth Circuit has decided in the affirmative an important federal question: May a municipality prohibit anonymous political communication in its attempt to regulate commercial solicitation, in a manner that conflicts with relevant decisions of this Court?

Jehovah's Witnesses are neutral in political affairs. (*Knowledge That Leads to Everlasting Life*, Plaintiffs' Trial Exhibit 6E, pg. 124, TR 86, referring to John 17:14). Nonetheless, without regard to their own interest, or lack of interest, in political discourse, and without waiving their assertions that their own First Amendment rights with respect to religious speech and press have been violated, Jehovah's Witnesses can properly challenge the Ordinance as being unconstitutionally overbroad, in that it also prohibits anonymous political discourse.[11]

11. This Court has permitted "a party to challenge an ordinance under the overbreadth doctrine" in situations creating "an impermissible risk of suppression of ideas" or where an "ordinance sweeps too broadly, penalizing a substantial amount of speech that is constitutionally protected." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129-30 (1992) (citations omitted).

Under the Ordinance, one must obtain a permit from the Mayor in order to go door to door. This would include someone who wants to anonymously hand out a political leaflet or even one who would want to speak to her neighbors about the need for a new mayor. In order to obtain the permit, she would have to identify herself to the municipality. She would also have to produce the permit, which includes her name, to a resident upon demand. Such requirements destroy the anonymity afforded political speech as guaranteed by this Court in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 357 (1995):

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority.

Stratton's ordinance removes that shield of anonymity. The municipality will know who is involved in the communication of political thoughts. Also, the Ordinance effectively prohibits anonymous door-to-door "interactive communication concerning political change" (*Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 186 (1999) (citation omitted)) in that it "compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." *Id.* at 184. Under the Ordinance, a resident can demand to see the permit, which contains the speaker's name. Defying this Court's holding in *Buckley*, which held that "First Amendment protection for such interaction . . . is 'at its zenith'" (*id.* at 187 (citation omitted)), the Sixth Circuit held regarding "the ability to speak to others anonymously" (App. A, 15a):

> [W]e do not understand how Stratton's ordinance inhibits this right. As we see it, individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities — their physical identities — to the residents they canvass. . . .
>
> While the ordinance requires political canvassers to reveal the remainder of their identities, i.e., their names, we do not believe that requirement rises to the level of impinging on First Amendment protected speech the Court sought to protect by fashioning the right in *McIntyre*.

(App. A, 15a-16a).

This Court upheld Mrs. McIntyre's right to personally distribute anonymous leaflets expressing thoughts designed to influence the electoral process. If the Sixth Circuit's decision stands, one can no longer engage in the same activity in Ohio, or Michigan, Kentucky, or Tennessee. Such a result is intolerably in conflict with this Court's holdings in *McIntyre* and *Buckley*, and must be rectified.

CONCLUSION

For the reasons stated above, this Court should grant the petition for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED, DECIDED AND FILED FEBRUARY 20, 2001

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Watchtower Bible and Tract Society of New York, Inc.; Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc.,

Plaintiffs-Appellants
(99-4087)/Appellees,

v.

Village of Stratton, Ohio; John M. Abdalla, Mayor of the Village of Stratton, Ohio, in His Official Capacity,

Defendants-Appellees/
Appellants (00-3325).

Nos. 99-4087;
00-3325

Appeal from the United States District Court
for the Southern District of Ohio at Columbus.
No. 99-00526 — Edmund A. Sargus, Jr., District Judge.

Argued: September 21, 2000

Decided and Filed: February 20, 2001

Before: MERRITT, KENNEDY, and GILMAN, Circuit Judges.

* * *

Appendix A

KENNEDY, J., delivered the opinion of the court, in which MERRITT, J., joined. GILMAN, J., delivered a separate opinion concurring in part and dissenting in part.

OPINION

KENNEDY, Circuit Judge. This case comes to the court on the consolidated appeals of plaintiffs, Watchtower Bible and Tract Society of New York, Inc. and Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc.; and of defendants, the Village of Stratton, Ohio, and its Mayor, John M. Abdalla. Plaintiffs appeal the district court's judgment denying portions of their First Amendment challenges to the Village's solicitation and canvass ordinance. On appeal they argue that the ordinance is facially unconstitutional because it is overly broad and vague, and, as applied, the ordinance violates their rights to free speech and free exercise of religion. Defendants appeal the district court's judgment awarding plaintiffs attorneys' fees as a prevailing party in the First Amendment litigation. They argue that the court erred in finding that plaintiffs were entitled to attorneys' fees, and in the alternative, if this court determines that plaintiffs were entitled to such fees, the amount the court awarded was unreasonable.

Because the ordinance is neither unconstitutionally overbroad nor vague and it is narrowly tailored to serve significant government interests, we affirm the district court's judgment finding the majority of the ordinance constitutionally permissible. And because the district court did not abuse its discretion in awarding plaintiffs reasonable attorneys' fees, we affirm that judgment as well.

Appendix A

I. FACTS

This dispute centers on the Village of Stratton's ordinance regulating the soliciting and canvassing of private homes in the Village. By its terms, the ordinance applies to "canvassers, solicitors, peddlers, [or] hawkers" that go on a private residence in the Village for the "purposes of advertising, promoting, selling and/or explaining any product, service, organization or cause." Such individuals must first register with the Office of the Mayor by filling out a Registration Form. The Registration Form requires the individuals to furnish information about their cause, why they are canvassing, which residences they intend to canvass, how long they intend to canvass, and any "other information concerning the Registrant[s] and [their] business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired."[1] Once the individuals have

1. Specifically, the relevant section of the Ordinance reads:

> The Form shall be completed by the Registrant and it shall then contain the following information:
>
> (1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;
>
> (2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;
>
> (3) The name and address of the employer or affiliated organization, with credentials from the employer or

(Cont'd)

registered, they "shall be furnished a Solicitation Permit" unless the Mayor determines that they (1) failed to complete the Registration Form, (2) provided fraudulent information on the form, (3) made false or fraudulent statements or misrepresentations while canvassing, (4) violated any other local, state, or federal laws, (5) trespassed while canvassing, or (6) ceased to possess the qualifications required to obtain a Solicitation Permit.[2] No fee is required to obtain a permit. Upon obtaining a permit, the canvassers may canvass any private residence in the Village between the hours of 9:00 a.m. and 5:00 p.m., provided the owner of the residence has not filed a No Solicitation Form with the Mayor's Office and has not posted a No Solicitation Sign on his property. Prior to this litigation, a No Solicitation Form contained a list of various organizations next to which the resident could

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(Cont'd)

organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific addresses of each private residence at which the Registrant intends to [canvass]; and

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

2. For the purposes of this opinion, we will refer to any activity covered by the ordinance as canvassing and those individuals engaging in such activities as canvassers.

place a checkmark to indicate the organizations the resident wished to be excluded from this general prohibition. While the No Solicitation Form listed several organizations by name, the only religious organization it listed by name was the Church of Jehovah's Witnesses.

If individuals covered by the ordinance fail to comply with these requirements, they could be charged with a misdemeanor of the fourth degree.

Plaintiffs challenged the ordinance in district court seeking a declaratory judgment that the ordinance is unconstitutional on its face and as applied to them and seeking a permanent injunction prohibiting the Village from enforcing the ordinance against them. After conducting a bench trial on the matter, the district court found that the ordinance applied to plaintiffs as they were "canvassers" seeking to explain their "cause." Moving to the constitutionality of the ordinance, the court rejected most of plaintiffs' arguments as without merit. The court did, however, find three provisions of the ordinance and one provision of an administrative form — some of which plaintiffs did not specifically challenge in their complaint — potentially constitutionally troubling, and therefore, took action to address those concerns. First, the court found that the 5:00 p.m. time restraint contained in the ordinance was an unreasonable restriction on time and ordered the Village to change the time restraint to allow for canvassing during all daylight hours. Second, it found that the section of the No Solicitation Form which singled out Jehovah's Witnesses was unconstitutional and ordered the Village to delete any reference to Jehovah's Witnesses from the No Solicitation

Form. Third, it found that in order for the ordinance's "additional information" requirement to be constitutional, Jehovah's Witnesses need only "note on the application that [they] seek[ ] to canvass as part of the Jehovah's Witness." Accordingly, the court construed the provision to require only that. Finally, it found that requiring plaintiffs to list on the Registration Form each residence they intended to visit was "an onerous regulation that could potentially violate the exercise of constitutional rights"; however, this problem was cured by the "Village allowing a Registrant to attach to the Registration Form a list of willing Village residents which is provided by the Mayor's office." It appears from the record that this was a voluntary measure taken by the Village prior to the lawsuit.

Unsatisfied with the scope of this relief, plaintiffs filed a timely notice of appeal from the court's judgment. The notice reads, "Plaintiffs . . . hereby appeal . . . those parts of the [district court's] Order . . . which uphold the constitutionality [—] facially and as applied to the Plaintiffs" — of the ordinance.[3]

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3. Plaintiffs are not appealing the portion of the ordinance the district court found unconstitutional and revised nor do they question the legitimacy of that ruling. Consequently, those questions are not before us. While we would likely have no problems with the court's decision to strike the time restriction provision from the ordinance as we believe it is severable under Ohio law, *see Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 202-03 (6th Cir. 1997), we would have a more difficult time with the court's attempt to rewrite that provision, *see Wilson v. National Labor Relations Bd.*, 920 F.2d 1282, 1289 (6th Cir. 1990) (recognizing that "courts cannot judicially redraft statutory language"). We are not concerned with

(Cont'd)

In addition to filing an appeal, plaintiffs, based upon the judgment on the merits, filed a motion for attorneys' fees pursuant to 42 U.S.C. § 1988. The district court determined that plaintiffs were a prevailing party and therefore entitled to attorneys' fees. After reducing the requested award, the court awarded plaintiffs $58,892.41 in attorneys' fees and costs. Defendants filed a timely notice of appeal from that judgment.

The appeals are now consolidated and before us.

II. CONSTITUTIONALITY OF THE ORDINANCE

The First Amendment to the United States Constitution provides, "Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech, or of the press." U.S. Const. amend. I. The Supreme Court has made the First Amendment's prohibitions applicable to the states through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Because state action includes municipal ordinances adopted under state authority, *see Lovell v. City of Griffin*, 303 U.S. 444, 450 (1938), the prohibitions extend to ordinances such as the one promulgated by Stratton. And because Stratton's ordinance requires canvassers to register prior to canvassing, it "carries with it (unless properly constrained) the power directly and substantially to affect speech" and must therefore

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(Cont'd)
the court's revision of the administrative forms as they are not part of the ordinance. Likewise, we are not concerned by the construction of the "additional information" provision of the ordinance, as courts routinely construe legislation so as to avoid constitutional problems.

undergo Free Speech Clause analysis. *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 801 (1988). And for similar reasons, it must also undergo Free Exercise Clause analysis.

A. Free Speech Challenges

Plaintiffs contend that the ordinance's requirement that canvassers register prior to canvassing fails the Free Speech Clause analysis both facially and as applied to them. Predictably, much of their argument is dedicated to attempting to convince us that the ordinance is subject to strict scrutiny. And as equally predictable, the Village dedicates a large portion of its brief to arguing that the ordinance is subject to some lower level of scrutiny.

1. Level of Judicial Scrutiny

As an initial matter, we note that the Supreme Court has not set forth a framework for determining what level of scrutiny to apply to laws that require an individual to obtain a permit prior to going door-to-door. It has, however, established a framework for answering the question in the context of laws requiring an individual to obtain a permit prior to engaging in speech in a public forum. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992). We conclude that the analytical framework set forth there applies to this ordinance as well. We reach this conclusion because, in discussing what standard applied to the County's ordinance, the Court characterized its analysis as one of whether the law's restrictions on speech were reasonable in the context of time, place, and manner. As that analysis applies to all laws through which government regulates oral

or written expression, *see Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 299 n.8 (1984), and the ordinance regulates oral and written expression, it is subject to the reasonable, time, place, and manner analysis.[4]

Under that framework, a law that is content based is subject to strict scrutiny. *See Turner Broad. Sys., Inc. v. Federal Communications Comm'n*, 512 U.S. 622, 642 (1994). On the other hand, a law that is content neutral and of general applicability is subject to some form of intermediate scrutiny. *See Community for Creative Non-Violence*, 468 U.S. at 293.

Using that framework, the district court determined that the ordinance was content neutral and of general applicability and therefore subject to intermediate scrutiny. Plaintiffs argue that the district court erred and urge us to review the ordinance under strict scrutiny. Strict scrutiny applies, they argue, because the ordinance potentially infringes upon two constitutionally protected rights — freedom of speech and freedom of religion — thereby making their claim a "hybrid rights" claim. And, they continue, the Supreme Court in *Employment Division v. Smith*, 494 U.S. 872 (1990), established that such claims subject the law in question to strict scrutiny. Hybrid rights claims aside, they argue, strict scrutiny applies because the ordinance discriminates based on the content of the speech. That discrimination is evidenced

4. The alternative would be to analyze the ordinance under the standard set forth in *United States v. O'Brien*, 391 U.S. 367 (1968), and its progeny. That standard "is little, if any, different from the standard applied to time, place, or manner restrictions." *Community for Creative Non-Violence*, 468 U.S. at 298.

by the reference to Jehovah's Witnesses in the No Solicitation Form and the Mayor's testimony that he would not furnish Jehovah's Witnesses with an exemption from the time restraints. In either case, they conclude, we must apply strict scrutiny when reviewing the ordinance.

We cannot agree. Our review of the ordinance leads us to conclude it is content neutral and of general applicability, and hence, subject to intermediate scrutiny. A law is content neutral and of general applicability if on its face and in its purpose it does not make a distinction between favored and disfavored speech. *See Turner Broad.*, 512 U.S. at 642-50. On its face, there is no indication that the ordinance distinguishes between favored and disfavored speech; it requires all individuals seeking to canvass to register irrespective of the content of their message. *See Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981). Nor do we find any evidence that the Village's purpose in promulgating the ordinance was to regulate speech based on the message it conveys. Instead, our review indicates that the Village's principal objective in promulgating the ordinance was to prevent fraud and protect the privacy interests of the residents of the Village. *See Ward v. Rock Against Racism*, 491 U.S. 781, 792 (1989).

The evidence plaintiffs cite in support of their argument misses the mark. That the No Solicitation Form listed Jehovah's Witnesses is not evidence that the Village's purpose in promulgating the ordinance was to restrict their speech; rather, it is evidence of the Village's administration of the ordinance. And that evidence does not indicate that the Village applied the ordinance unequally. It may simply

be that Jehovah's Witnesses, along with the other organizations listed on the form, canvassed or solicited more frequently than other groups, thereby making it efficient to place their name on the form. Likewise, the testimony of the Mayor that he would not grant Jehovah's Witnesses an exemption from the ordinance's hours restriction is not evidence of the purpose of the Village in promulgating the ordinance. Nor is it evidence of the Village's application of the ordinance, as plaintiffs have not applied for an exemption. We do note, as the district court did, that were we to find disparate treatment in the granting of exemptions from the time restraints, we would be troubled. However, as our review finds nothing of the sort, we believe the ordinance is neutral on its face and the Village's purpose in promulgating it was content neutral. Therefore, we hold that it is subject to intermediate scrutiny.

In so holding, we reject plaintiffs' assertion that the Supreme Court established in *Employment Division v. Smith* that laws challenged by hybrid rights claims are subject to strict scrutiny. While much debate has revolved around the Court's language in *Smith*, we do not believe the Court held there, nor has it ever held, that a different level of scrutiny applies to laws that potentially affect hybrid rights. In rejecting the plaintiffs' argument that " 'prohibiting the free exercise [of religion]' includes requiring any individual to observe a generally applicable law," the *Smith* Court noted,

> The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause

> alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press . . . .

Smith, 494 U.S. at 878, 881. That language was dicta and therefore not binding. Further, as we held in *Kissinger v. Board of Trustees of the Ohio State University*, 5 F.3d 177, 180 (6th Cir. 1993), aside from the fact that the *Smith* Court did not hold that a hybrid rights claim subjects a law to a higher level of scrutiny, the Court did not explain how a hybrid rights claim would alter the level of scrutiny (we note that the one probably had a lot to do with the other). Based in part upon the lack of an explanation from the Court, we declined to alter the standard of scrutiny for laws affecting hybrid rights until the Supreme Court provided guidance. The Court has yet to provide such guidance, and therefore, we adhere to our decision in *Kissinger* and continue to decline to alter the standard of scrutiny. Accordingly, the district court was correct to subject the ordinance to intermediate scrutiny in analyzing the merits of plaintiffs' free speech claims.

2. Merits of Free Speech Claims

It bears emphasis that, contrary to plaintiffs' assertions, Supreme Court dicta is not on their side. On numerous occasions the Court has strongly suggested that registration schemes such as the Village's would pass constitutional muster.

> Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons

> may, with impunity, commit frauds upon the public. . . . Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Cantwell, 310 U.S. at 306; *see also Martin v. City of Struthers*, 319 U.S. 141, 148 & n.14 (1943) (making clear that a city "can by identification devices control the abuse of the privilege by criminals posing as canvassers").[5]

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5. Several of our sister circuits have indicated in dicta that they would reject challenges to the identification portion of solicitation ordinances similar to Stratton's as well. *See, e.g., City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547, 1557 (7th Cir. 1986) ("Watseka's attempt to safeguard its citizens' privacy and protect them from crime is laudable, and the majority of the ordinance's provisions are narrowly tailored to promote Watseka's objectives with only minimal interference with First Amendment rights. Indeed, IPAC is more than willing to comply with Watseka's registration requirements . . . . It is only the 5 p.m. to 9 p.m. complete ban on solicitation that fails to pass constitutional muster . . . ."); *Association of Cmty. Org. for Reform Now v. City of Frontenac*, 714 F.2d 813, 818-19 & n.7 (8ih Cir. 1983) ("Frontenac has a legitimate interest in protecting its residents from crime. This objective can be served satisfactorily by enforcement of the city's application and identification for all canvassers, peddlers, and solicitors."). Additionally, the Third Circuit has facially upheld an ordinance requiring canvassers to obtain a license prior to going door-to-door. *See Pennsylvania Alliance for Jobs & Energy v. Council of the Borough of Munhall*, 743 F.2d 182, 188 (3d Cir. 1984).

Appendix A

We begin our review with a brief discussion of the differences between as applied and facial challenges. "If a statute is unconstitutional as applied, the State may continue to enforce the statute in different circumstances where it is not unconstitutional, but if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances." *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997). Consequently, "a plaintiff's burden in an as-applied challenge is different from that in a facial challenge. In an as-applied challenge, the plaintiff contends that application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional." *Id.* Generally, a plaintiff's burden in a facial challenge is higher: the plaintiff must prove that there is no set of circumstances in which the statute's application would be constitutional. *See id.* at 194. That is not the case, however, when the statute regulates speech. Because the remedy for successful facial challenges is broader in scope, we begin our analysis there.

a. Facial Challenges

"In a facial challenge to the overbreadth and vagueness of a law, the court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail. The court should then examine the facial vagueness challenge . . . ." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982). We proceed accordingly.

Appendix A

i. Unconstitutionally Overbroad

Plaintiffs argue the ordinance is unconstitutionally overbroad because it would have the effect of prohibiting individuals from going door-to-door to engage in political speech without first obtaining a permit. An effect, they allege, the Supreme Court effectively made unconstitutional in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), by invalidating an Ohio statute that prohibited the distribution of anonymous campaign literature. Because requiring individuals engaging in political speech to register before going door-to-door would effectively prevent them from remaining anonymous, they conclude, the ordinance is unconstitutional. They are mistaken.

McIntyre's holding misses Stratton's ordinance. The *McIntyre* Court established a First Amendment right to distribute political pamphlets anonymously. *See id.* at 357. We agree that read broadly, the opinion arguably includes in that right the ability to speak to others anonymously. But we do not understand how Stratton's ordinance inhibits this right. As we see it, individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities — their physical identities — to the residents they canvass. In other words, the ordinance does not require canvassers going door-to-door to reveal their identities; instead, the very act of going door-to-door requires the canvassers to reveal a portion of their identities.

While the ordinance requires political canvassers to reveal the remainder of their identities, *i.e.*, their names, we

do not believe that requirement rises to the level of impinging on First Amendment protected speech the Court sought to protect by fashioning the right in *McIntyre*. By creating a right of anonymity, the Court sought "to protect unpopular individuals from retaliation — and their ideas from suppression." *Id.* Once the political canvassers are before the resident, the ability to protect them from those dangers is substantially diminished. Accordingly, there is little reason to read the Court's holding as protecting political canvassers from being required to reveal a portion of their identities when their very activity will reveal other portions of their identity and subject them to scrutiny.[6]

ii. Unconstitutionally Vague

v is unconstitutionally vague when it does not afford a "person of ordinary intelligence a reasonable opportunity to know what is prohibited," *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972), or when it authorizes or encouragers arbitrary and discriminatory enforcement, *see Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Put more specifically, a statute is vague when the state has "fail[ed] to provide such minimal guidelines" that would prevent "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Kolender*, 461 U.S. at 358 (quoting *Smith v. Goguen*, 415 U.S. 566, 575 (1974)) (alterations in the original). The ordinance is such a

6. Even if *McIntyre* were implicated, we would find the ordinance constitutional on its face. In reviewing Ohio's statute, the Court applied strict scrutiny. As we have already noted, we are reviewing Stratton's ordinance under intermediate scrutiny. We believe the difference in scrutiny would be outcome determinative.

law, plaintiffs contend, because the meanings of the terms "solicitor," "canvasser," and "cause" are not clear. They offer no explanation for why "solicitor" and "canvasser" are vague; but contend that the Supreme Court has found the term "cause" to be vague.

We find no merit in any of these assertions. Only the last assertion requires any explanation. According to plaintiffs, the Supreme Court's decision in *Hynes v. Mayor & Council of the Borough of Oradell*, 425 U.S. 610 (1976), established that "the word 'cause' is unconstitutionally vague." Specifically, they point to footnote five of the opinion which states, "In the circumstances of this case these allegations are enough to put in issue the precision or lack of precision with which the ordinance defines the *categories* of 'causes' it covers." *Hynes*, 425 U.S. at 621 n.5 (emphasis added). The language plaintiffs quote defeats their argument. As the language indicates, in finding the ordinance vague, the Supreme Court did not criticize the use of the word cause, rather it criticized the ordinance's modification of the word with the phrases "recognized charitable" and "Federal, State, County or Municipal." Specifically, the Court stated that the ordinance "does not explain, for example, whether 'Recognized charitable cause' means one recognized by the Internal Revenue Service as tax exempt, or one recognized by some community agency . . . [and] it is not clear what is meant by a 'Federal, State, County, or Municipal' " cause. *Id.* at 621. Because Stratton's ordinance does not modify the term cause but includes all causes, the holding of and the reasoning in *Hynes* is not applicable.

b. As Applied Challenge[7]

In the context of an as applied challenge, a law requiring registration prior to engaging in speech would pass intermediate scrutiny if it were narrowly tailored to serve a significant government interest and left open ample alternatives for communication. *See Nationalist Movement*, 505 U.S. at 130. If the interest is in redressing past harm or preventing anticipated harms, the government must demonstrate that the harms are real. *See Edenfield v. Fane*, 507 U.S. 761, 770 (1993). An anticipated harm would be considered real if we determined that "there [was] a reasonable ground to fear that serious evil [would] result if free speech [were] practiced" without the regulation. *United States v. National Treasury Employees Union*, 513 U.S. 454, 475 (1995) (internal citations and quotation marks omitted). In making this determination, we pay deference to the predictive judgments of the government. *See Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 103 (1973). A law would be considered narrowly tailored to promote the governmental interests if the interest "would be achieved less effectively absent the regulation," *Ward*, 491

7. Although the Village has not brought an enforcement action against plaintiffs, we believe plaintiffs have standing to proceed on their as applied challenge. *See Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289 (1979). Because plaintiffs have "alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder," they are not "required to await and undergo criminal prosecution as the sole means of seeking relief." *Id.* at 298 (internal citations and quotation marks omitted).

U.S. at 799, and the regulation does not "burden substantially more speech than is necessary" in furthering the interest, id. And finally, while it is unclear exactly what constitutes ample alternatives for communication, it is clear that this standard does not mean the least restrictive means of promoting the interest in question. *See id.* at 797-98.[8]

As applied to them, plaintiffs argue, the ordinance's registration scheme does not meet these standards because it does not promote a significant government interest and is not narrowly tailored to promote the interests that the Village alleges are significant. Specifically, they argue that the Village has no significant interest to promote because (1) its interest in protecting its residents from annoyance in their homes simply is not a significant governmental interest and (2) while a government's interest in preventing fraud is significant, the Village has not shown that there is a real threat of fraud to its residents. The ordinance is not narrowly tailored, they maintain, because it does not leave open ample alternative channels of communication. Given these flaws, they conclude, we must prohibit the Village from enforcing the ordinance against them.

We disagree. There can be little doubt that the governmental interests the Village seeks to promote —

8. The Supreme Court made this clear in *Ward* where it said, "This less restrictive-alternative analysis . . . has never been a part of the inquiry into the validity of a time, place, and manner regulation. . . . Instead, our cases quite clearly hold that restrictions on time, place, or manner of protected speech are not invalid simply because there is some imaginable alternative that might be less burdensome on speech." *Ward*, 491 U.S. at 797 (internal citations and quotation marks omitted).

protecting its residents from fraud and undue annoyance in their homes — are sufficiently significant. *See Ward*, 491 U.S. at 796; *Hynes*, 425 U.S. at 616-17.[9] And, the harm the

9. Contrary to Watchtower's assertions at oral argument, the Court in *Martin v. City of Struthers* did not hold that a government's interest in protecting its residents from undue annoyance in their homes is insufficient to uphold an ordinance such a Stratton's. At best, the Court said that such an interest is insufficient to uphold an ordinance flatly prohibiting door-to-door canvassing. *See Martin*, 319 U.S. at 144. Further, Watchtower's argument demonstrates a misunderstanding of how the ordinance serves the Village's interest in protecting its residents from undue annoyances. The interest primarily supports the portion of the ordinance prohibiting canvassers from going to the doors of residents who have indicated they wish to be left alone. It does so by (1) attaching a criminal penalty to canvassers who ignore those wishes and (2) requiring identification from the canvasser prior to canvassing so that if he does ignore the wishes of the residents, the Village has information that will assist it in prosecuting the canvasser, thereby adding to the likelihood that a canvasser will be deterred from canvassing such residents. Nothing the Supreme Court has said suggests that this is not a sufficient interest to support a municipality promulgating a content-neutral ordinance such as Stratton's. In fact, the Court's opinions seem to suggest the opposite.

> The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free society. . . . Our prior decisions have often remarked on the unique nature of the home, the last citadel of the tired, the weary, and the sick, . . . and have recognized that preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value.

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Village seeks to prevent — criminals posing as canvassers in order to defraud its residents — is a real threat. While the evidence of this reality is by no means overwhelming, we believe it is sufficient. That evidence consists of the testimony of Helen MacMurray, Ohio Assistant Attorney General; the Village's Mayor; and Frank Bruzzese, the Village's Solicitor. In her testimony, Ms. MacMurray stated that Ohio has had difficulty with several groups that perpetrate frauds by going door-to-door posing as solicitors or canvassers. And the testimony of the Village's Mayor and its Solicitor indicate that the Village was aware of problems in other Ohio cities with door-to-door fraud when it passed the ordinance. Plaintiffs argue the fact that Ohio has had

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> One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear . . . , the home is different. That we are captives outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere. . . . Thus, we have repeatedly held that individual's are not required to welcome unwanted speech into their homes and that the government may protect this freedom.

Frisby v. Schultz, 487 U.S. 474, 484 (1988) (internal citations and quotation marks omitted); *see also Hynes*, 425 U.S. at 616-17. Several of our sister circuits have also held that the state's interest in protecting its citizens from undue annoyance is sufficient to support statutes facing intermediate scrutiny. *See, e.g., Van Bergen v. Minnesota*, 59 F.3d 1541, 1554 (8th Cir. 1995) (finding that Minnesota's interest in protecting its citizens from unwanted annoyances was a sufficient interest to regulate automated telephone calls); *Pennsylvania Alliance for Jobs & Energy*, 743 F.2d at 187.

problems with such fraud is insufficient to establish a real anticipated harm; they would instead require that Stratton itself have had problems with fraud before it could promulgate an ordinance to prevent fraud. That argument ignores the fact that the interest the ordinance promotes is preventing an anticipated harm. If we required the Village to wait until it had trouble with door-to-door fraud, we would be depriving it of a police power the Supreme Court has made clear municipalities possess. It also ignores the principle reaffirmed by the Supreme Court's holding in *City of Erie v. Pap's A.M.*, 529 U.S. 277, 298 (2000), that a city may use evidence from the experiences of other cities that are similarly situated to establish a reasonable ground to believe that an anticipated harm is real. *See also City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-53 (1986). As municipalities may take the experiences of other municipalities into account, we pay deference to the Village's predictive judgment and the district court's finding in substance that "there [was] a reasonable ground to fear that serious evil [would] result if free speech [were] practiced" without the ordinance. *National Treasury Employees Union*, 513 U.S. at 475. Accordingly, the Village was entitled to promulgate an ordinance that was narrowly tailored to promote its interests in preventing fraud and in protecting its residents from unwanted annoyance.

And from our review of the record, we believe that is what the Village did. The ordinance promotes the Village's interest in protecting the privacy of its residents by creating additional deterrents for canvassers, including Jehovah's Witnesses, who are considering ignoring a resident's wishes and canvassing the resident's home. A Jehovah's Witness is

more likely to respect the resident's wishes not to be canvassed when a criminal penalty — albeit a light penalty — is connected to such conduct in addition to the threat of civil action. Thus, the penalty attached to canvassing the house of a resident with a No Solicitation Sign more effectively promotes the Village's interest. The ordinance's registration requirements also likely deter Jehovah's Witnesses from canvassing homes with No Solicitation Signs and forms because they are aware that the Village now has information — name, address, organization or cause — helpful in apprehending someone who ignores a resident's wishes. The extra deterrence the ordinance creates promotes the Village's interest in protecting its residents from undue annoyance and that interest "would be achieved less effectively absent the [ordinance]." *Ward*, 491 U.S. at 799.

As to the latter method of furthering the interest — the registration requirement — the dissent misstates the issue. It is not whether the requirement deters by increasing the degree of punishment. Rather it is whether the requirement increases the likelihood of punishment. It does.

The Village's interest in preventing fraud would also be achieved less effectively absent the ordinance. Absent a registration requirement, the Village has no way of assessing whether canvassers are in fact affiliated with an organization such as Jehovah's Witnesses or are instead perpetrators of fraud using a Jehovah's Witnesses claim as cover. Requiring the individuals to identify themselves as having a relationship with the organization provides the Village with information helpful in making this assessment. Consequently, the ordinance better equips the Village in its attempt to turn away

perpetrators posing as Jehovah's Witnesses. Moreover, the requirements go further than anti-fraud laws in deterring such individuals from committing fraud because they know the Village has information that would make it easier to apprehend them were they to do so.

We believe the dissent misunderstands our reasoning and the effect of the registration requirement. Its argument that the requirement burdens substantially more speech than necessary because it requires registration "not only for those wishing to engage in sales transactions — a possible avenue for fraud — but also for those wishing to engage in political, religious, or social advocacy" assumes too much. First, it assumes that the only avenue for engaging in fraud is posing as a sales person. That need not be the only avenue. Second, it assumes that one who intends to engage in fraud by posing as a sales person would be honest enough to inform the Village that he was intending to pose as a sales person and thus would register as such. That is not necessarily the case. It is also possible that the criminal would inform the Village that he was going to engage in political, religious, or social advocacy in order to avoid the registration requirement. It would be nice if the Village had the ability to discern in advance who, or what type of groups, will commit fraud. However, it does not. And absent such ability, the Village does not burden substantially more speech than necessary by requiring all individuals seeking to go door-to-door to register.

Moving to the final requirement of intermediate scrutiny, we believe that the ordinance leaves open ample alternatives of communication. Indeed, the ordinance does not foreclose

the option of going door-to-door; one only need register first. Plaintiffs' argument that the ordinance effectively forecloses that option to them because of their religious convictions, as we will discuss below, is foreclosed by the Court's decision in *Employment Division v. Smith*.[10] Further, there are several alternatives to door-to-door canvassing: Jehovah's Witnesses may spread their message at stores, on street corners, in restaurants, in parks, and other public forums.

This is not to say, as the dissent suggests we are holding, that meeting the ample alternatives requirement alone is sufficient to pass constitutional muster. Indeed, if that were the case, we would have foregone the rest of the analysis, evaluated the alternatives available to Jehovah's Witnesses, and called it a day.

As the ordinance satisfies the ample alternatives as well as the other requirements of intermediate scrutiny, we hold that the ordinance does not violate plaintiffs' free speech rights.

B. Free Exercise Claims

1. Whether the Ordinance is Unconstitutional

We reach the same conclusion with respect to plaintiffs' free exercise challenges. Other than arguments that the

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10. Plaintiffs and dissent argue that the Village could have included in the ordinance an exception from its requirements for Jehovah's Witnesses. If the Village had included such an exception, however, the ordinance would not be content neutral. Therefore, we do not believe that to be a viable alternative here.

ordinance fails strict scrutiny, plaintiffs offer no arguments for why the ordinance violates their free exercise rights.

Instead, they cite a handful of Supreme Court cases all of which, they claim, stand for the proposition that the "Supreme Court has continuously held that Jehovah's Witnesses cannot be required to obtain a permit in order to engage in door-to-door religious speech." And that "[i]n not one [of those cases] did the Supreme Court hold that Jehovah's Witnesses must obtain a permit prior to engaging in door-to-door dissemination of Bible-based ideas or literature." That is probably because few of those cases involved an ordinance requiring such a permit. Instead, many of the ordinances flatly prohibited the dissemination of ideas either in a public forum or door-to-door. *See Marsh v. Alabama*, 326 U.S. 501, 504 (1946); *Martin*, 319 U.S. at 142; *Schneider v. New Jersey*, 308 U.S. 147, 154, 156, (1939). The ordinances that did require a permit, unlike the Village's ordinance, left the decision whether to grant the permit at the discretion of a municipal officer. *See Tucker v. Texas*, 326 U.S. 517, 519 (1946); *Cantwell*, 310 U.S. at 302; *Schneider*, 308 U.S. at 158; *Lovell*, 303 U.S. at 451. In short, contrary to plaintiffs' assertions, not one of these cases mandates a finding that the ordinance violates their free exercise rights.

Nor does a general review of the ordinance under current law warrant such a finding. Under recent Supreme Court precedent, a law that is content neutral and of general applicability does not violate an individual's free exercise rights. *See Smith*, 494 U.S. at 879; *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993).

One that is not content neutral or not of general applicability, on the other hand, must pass strict judicial scrutiny. *See Church of Lukumi Babalu Aye*, 508 U.S. at 531-32.

We find the law to be both content neutral and of general applicability. In the context of free exercise challenges, a law is not content neutral if "the object of the law is to infringe upon or restrict religious practices because of their religious motivation." *Id.* at 532. To determine whether the law has such an object, we look to the language of the law; the operation of the law; and how officials apply the law. *See id.* at 532-35. A law is facially content based if it refers to a religious practice without a discernable secular meaning. *See id.* at 532. The ordinance does not. While the No Solicitation Form did refer specifically to Jehovah's Witnesses, it is not part of the text of the ordinance. Further, the district court ordered the Village to remove that language. The ordinance is also neutral in its operation; it imposes the same burdens on all individuals or organizations seeking to canvass door-to-door. *See id.* at 535. Finally, we believe that the Village officials have applied the ordinance neutrally. There is no indication that the Mayor discriminated against religious organizations in determining whether to grant permits. Indeed, there is little room for him to make any decision once the applicant completes the Registration Form. And contrary to plaintiffs' assertion, the Mayor's statements that he would not grant Jehovah's Witnesses an exemption from the ordinance's time restrictions on canvassing does not compel a finding that he unequally applied the ordinance. He has never applied the ordinance's time restrictions to them because they have never requested an exemption from the restrictions.

We also find that the law is of general applicability. To be generally applicable, the law must not be the product of a government action that, in pursuit of legitimate interests, "impose[s] burdens only on conduct motivated by religious belief essential to the protection of the rights guaranteed by the Free Exercise Clause." *Id.* at 543. The ordinance is not the product of such action. The Village has made clear that its interest was in preventing fraud and protecting its residents from undue annoyance. In pursuing these ends, the ordinance burdens any individual seeking to canvass door-to-door. As the ordinance is content neutral and generally applicable, we hold that it does not violate plaintiffs' free exercise rights.

2. Exemption from the Ordinance

For the same reason, we deny plaintiffs' request for an exemption from the requirements of the ordinance. Plaintiffs argue that they should be granted an exemption from the ordinance because seeking permission to spread their religious beliefs violates their religious convictions. To support their argument they cite *Wisconsin v. Yoder*, 406 U.S. 205 (1972), for the proposition that where an individual's beliefs are a matter of deep rooted religious convictions and complying with the regulation would violate those convictions, the individual should be granted an exemption from complying with the regulation.

That is not the law. As the Court noted in *Smith*, it "has never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Smith*, 494 U.S. at 878-79. Our review indicates that the ordinance is valid, and therefore, plaintiffs must comply with it.

In conclusion, we affirm the district court's judgment that the ordinance does not violate plaintiffs' First Amendment rights and we deny them an exemption from complying with the ordinance. We now review the Village's challenges to the district court's judgment awarding plaintiffs attorneys' fees.

III. ATTORNEYS' FEES

Briefly, the Village argues that the district court erred in awarding attorneys' fees by concluding (1) that plaintiffs were the prevailing party and (2) that they obtained substantial relief and were thus entitled to compensation for the time their attorneys expended on the entire course of the litigation. It contends that plaintiffs' relief was so small — and not of the type sought — that they cannot be considered the prevailing party. And, even if they are, by no means did they obtain the relief for which they hoped — being exempted from complying with the ordinance — and therefore cannot be considered to have achieved substantial success.

In reviewing an award of attorneys' fees under § 1988, we review the factual findings underlying the district court's determination of prevailing status for clear error and its award of attorneys' fees for abuse of discretion. *See Gregory v. Shelby County*, 220 F.3d 433, 446 (6th Cir. 2000). "A district court abuses its discretion when it relies on clearly erroneous findings of facts" or "when it improperly applies the law or uses an erroneous legal standard." *Owner-Operator Indep. Drivers Ass'n, Inc. v. Bissell*, 210 F.3d 595, 597 (6th Cir. 2000).

Appendix A

We have no trouble agreeing with the district court's conclusion that plaintiffs were in fact the prevailing party. As a result of the litigation, their legal relationship with the Village was altered in a manner which they sought. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The question of whether this success is sufficient to be considered substantial is much tougher. The Village is correct that plaintiffs must still register prior to canvassing, and eliminating that requirement was a focal point of their lawsuit. As it is a close call, we defer to the factual findings of the district court and conclude that it did not abuse its discretion in awarding attorneys' fees in the amount of $39,340.87; $15,464.04 in out of pocket expenses; and $4,087.50 for paralegal costs.

Therefore, we affirm the district court's judgment awarding plaintiffs attorneys' fees and costs.

IV. CONCLUSION

For the foregoing reasons, we affirm the district court's judgments.

Appendix A

CONCURRING IN PART, DISSENTING IN PART

RONALD LEE GILMAN, Circuit Judge, concurring in part and dissenting in part. I agree with the majority that the Village of Stratton's ordinance is not unconstitutionally vague and does not violate the free exercise rights of the Jehovah's Witnesses. Because the ordinance is content neutral on its face, I also agree that intermediate scrutiny is the proper standard applicable to its review. Finally, I agree with the majority's decision to affirm the award of attorneys fees to the Jehovah's Witnesses.

I disagree, however, with the majority's application of the intermediate scrutiny standard, and would hold that the ordinance violates the First Amendment by burdening substantially more speech than is necessary to further the Village's legitimate interests. *See Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). Consequently, I would declare that the ordinance's permit requirement is unconstitutional as applied to the Jehovah's Witnesses.

The Supreme Court has long since recognized that the regulation of door-to-door solicitors must comport with the First Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940) (striking down an ordinance specifically requiring door-to-door solicitors for religious, charitable, or philanthropic causes to first obtain a permit). Content-neutral regulations, on the other hand, are analyzed under an intermediate scrutiny standard of review. *See Ward*, 491 U.S. at 798-99 (applying intermediate scrutiny to content-neutral noise regulations). This standard, however, does not mean that a content-neutral regulation "may burden substantially

more speech than is necessary to further the government's legitimate interests." *Id.* at 799. Rather, a content-neutral regulation must "focus[ ] on the source of the evils the [government] seeks to eliminate" and "eliminate them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." *Id.* at 800 n.7.

In the present case, the Village has articulated a legitimate interest in eliminating two evils — fraud and unwanted annoyance. The question, then, is whether the means chosen by the Village to implement its goals significantly restricts a substantial quantity of speech that does not create the same evils. I am of the opinion that the ordinance does just that.

First, by subjecting noncommercial solicitation to its permit requirements, the ordinance restricts a substantial amount of speech unrelated to the prevention of fraud. The ordinance requires a permit not only for those wishing to engage in sales transactions — a possible avenue for fraud — but also for those wishing to engage in political, religious, or social advocacy. Indeed, the Village's own "No Solicitation Registration Form" acknowledges that the ordinance reaches political candidates, Christmas carolers, and campaigners for social issues, none of whom create the threat of fraud that the Village intended to address. The ordinance therefore burdens substantially more speech than is necessary to promote the legitimate government interest of fraud protection. *See Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 383, 386-90 (6th Cir. 1996) (applying an intermediate scrutiny standard to declare an ordinance unconstitutional

that banned all yard signs, concluding that the ordinance burdened substantially more speech than necessary to promote the legitimate government interest in aesthetics).

The majority emphasizes that "the ordinance does not foreclose the option of going door-to-door; one only need register first." Majority Op. at 20-21. Such an argument implies that because a person can engage in speech once he or she has obtained a permit, all permit requirements are constitutional. This is clearly *not* the law. *See Cantwell*, 310 U.S. at 303-07. Although a permit requirement is not per se invalid, it bears a heavy burden to pass constitutional muster because it gives public officials the power to deny the use of a forum in advance of actual expression. *See Community for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1390 (D.C. Cir. 1990) (finding unconstitutional, on the basis of intermediate scrutiny, an ordinance requiring permits of all people wishing to engage in content-neutral, noncommercial speech on transit authority property, where the "[p]ersons desiring to engage in any organized free speech activities in the . . . forum are subject to the permit requirement"). Consequently, the type of persons and entities subject to the permit requirement must be analyzed to determine an ordinance's impact on speech. *See id.* at 1393.

The majority also states that the Jehovah's Witnesses "may spread their message at stores, on street corners, in restaurants, in parks, and other public forums." Majority Op. at 21. The Supreme Court, however, has stressed the unique role of door-to-door solicitation as a means of communication, stating that "as every person acquainted with political life knows, door to door campaigning is one of the most accepted

techniques of seeking political support .... Door to door distribution of circulars is essential to the poorly financed causes of little people." *Martin v. City of Struthers*, 319 U.S. 141, 146 (1943). I believe that this reasoning applies with equal force to the communication of religious beliefs. The availability, therefore, of other outlets for such speech does not alleviate the special burden that this ordinance places on door-to-door solicitation.

The narrowly tailored requirement demands a balance between the legitimate interests of the government and the constitutional rights of individuals. However, the majority opinion concludes in a very generalized way that the Village of Stratton's registration requirement is constitutional because it "more effectively promotes the Village's interest." Majority Op. at 19. But just as the majority accuses the dissent of assuming that those who intend to commit fraud would register as salespeople, the majority assumes (in my view, incorrectly) that those intending to commit fraud would in fact register at all.

As to the Village's asserted interest in protecting homeowners from "unwanted annoyances," this interest can be achieved by less restrictive means, such as by enforcing laws against trespass. *See Discovery Network, Inc. v. City of Cincinnati*, 946 F.2d 464, 473 n.14 (6th Cir. 1991) (finding unconstitutional, even under intermediate scrutiny, a Cincinnati ordinance prohibiting the distribution of commercial handbills on public property because "there are many options available to the city that would address its aesthetic, safety, and proliferation concerns without placing the significant burden on commercial speech that the ordinance does").

Indeed, the Village already effectively achieves its interest in protecting homeowners from unwanted annoyances through the section of the ordinance that forbids solicitation at residences where the homeowners have posted "No Solicitation" signs. The same penalty, a fourth-degree misdemeanor, is imposed for violating the "No Solicitation" section as for violating the registration section of the ordinance. Thus someone who would register because they are deterred by the penalty for failing to do so would presumably already be deterred from ignoring a "No Solicitation" sign, while someone who is willing to risk the penalty imposed for ignoring a "No Solicitation" sign would presumably also be willing to risk the penalty for failing to register. The registration requirement, accordingly, is not narrowly tailored to protect homeowners from unwanted annoyances. *See Ward*, 491 U.S. at 799 (stating that a regulation is narrowly tailored under the intermediate scrutiny standard if it "promotes a substantial government interest that would be achieved less effectively absent the regulation").

"Our cases make clear that in assessing the reasonableness of a regulation [that affects speech], we must weigh heavily the fact that communication is involved." *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972). Consequently, "[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entm't Group, Inc.*, 120 S. Ct. 1878, 1888 (2000). This burden, however, "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites

are real and that its restriction will in fact alleviate them to a *material degree*." *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 625 (1995) (applying the intermediate scrutiny standard to restrictions on legal advertising) (citations omitted and emphasis added). In this case, the Village of Stratton has failed to demonstrate either the reality of the harm or the efficacy of the restriction.

For all of the reasons set forth above, I would hold that the ordinance's permit requirement is an unconstitutional infringement on the Jehovah's Witnesses' First Amendment rights.

APPENDIX B — MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION DATED AUGUST 6, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

No. C2-99-526

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.,

Plaintiffs,

v.

VILLAGE OF STRATTON, OHIO, et al.,

Defendants.

Aug. 6, 1999.

* * *

MEMORANDUM ORDER

SARGUS, District Judge.

On June 3, 1999, plaintiffs brought this action for preliminary and permanent injunctive relief seeking to enjoin defendants from enforcing a local Ordinance that allegedly interferes with plaintiffs' exercise of their constitutionally

protected rights to freedom of religion, freedom of speech, freedom of the press, and due process of law. Plaintiffs, both religious organizations which include practicing Jehovah's Witnesses, allege that the Ordinance is unconstitutional on its face and as applied because it interferes with their First Amendment right to go door-to-door in the Village of Stratton as part of their religious belief that they should share the Gospel with others. Defendants assert that the Ordinance is a content neutral, narrowly tailored regulation designed to protect the privacy interests of its citizens.

The parties and counsel convened in St. Clairsville, Ohio on July 27, 1999 for a hearing related to the preliminary and permanent injunction issues before the Court. After hearing a day of testimony and upon full consideration of the parties' briefs, the Court ruled from the Bench on plaintiffs' application for preliminary and permanent injunctive relief. This Order serves to memorialize those rulings.

The Village of Stratton, Ohio is a small town of fewer than 300 residents located along the Ohio River. In 1998, the Village passed an Ordinance that regulated the activities of solicitors and canvassers in the town. Generally, the Ordinance was designed to protect the privacy rights of the Village residents. According to the testimony of Frank Bruzzese, Village of Stratton Solicitor, the Ordinance was constructed to protect the Village residents from "flim flam" con artists who prey on small town populations.

It is without question that the Village of Stratton, through the powers accorded Ohio municipalities under Article XVIII, Section 3 of the Ohio Constitution, has the authority

to promulgate local laws concerning public health, safety, and welfare. *Cincinnati N & C Ry. Co. v. Cincinnati*, 71 F.2d 124 (6th Cir.1934). The valid police powers possessed by the various states and delegated to municipalities are, of course, restricted by the various rights set forth in the Constitution, particularly the First Amendment.

The Village Ordinance at issue is Ordinance No. 1998-5, which includes solicitor registration requirements and regulations. The Court must first determine whether this Ordinance applies to plaintiffs as Jehovah's Witnesses. Section 116.01 is the introductory statement of the Ordinance that prohibits uninvited soliciting within the Village of Stratton.[1] The Court finds that Ordinance No. 1998-5 does apply to plaintiffs because Jehovah's Witnesses are "canvassers" who visit homes in neighborhoods for the

---

1. Section 116.01 provides as follows:

> The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

See Plaintiffs' Trial Exhibit 1.

purpose of "explaining" their "cause," the Gospel of Jehovah. Therefore, the activities of the Jehovah's Witnesses are encompassed by the provisions of Ordinance No. 1998-5.

By the terms of the Ordinance, if a person or entity seeks to engage in conduct defined in Section 116.01, such party must first obtain a valid permit. Section 116.03 of the Ordinance speaks to the registration requirements for potential Village canvassers.[2] No fee is required to obtain a

2. Section 116.03 of the Ordinance states as follows:

> (a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.
>
> (b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:
>
> (1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;
>
> (2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause and/or the goods or services offered;
>
> (Cont'd)

permit. The Court finds that subsections (1 – 4) of Section 116.03(b) are valid, content neutral governmental regulations designed for the safety and security of the Village residents. Subsections (1 – 4) do not infringe upon plaintiffs' First Amendment rights of speech, religion, or free press. The Court views subsection (5), which requires listing the specific address of each private Village residence a Registrant intends to visit, as an onerous regulation that could potentially violate the exercise of constitutional rights. The burden of this provision, however, is cured by the Village allowing a Registrant to attach to the Registration Form a list of willing Village residents which is provided by the Mayor's office.[3]

(Cont'd)

> (3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;
>
> (4) The length of time which the privilege to canvass or solicit is desired;
>
> (5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and
>
> (6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

3. The Court suggests that the Registrant be informed of this procedure somewhere on the Registration Form.

Failure on the part of the Village to make such lists readily available at no cost may render the Ordinance unconstitutional.

Subsection (6) requires applicants to provide information concerning the purpose of the canvassing activities "as may be reasonably necessary to accurately describe the nature of the privilege desired."[4] Just as business or political canvassers are required to be identified, Jehovah's Witnesses may also be required to state their business "as may be reasonably necessary to accurately describe the nature of the privilege desired." Ordinance No. 1998-5, Section 116.03(b)(6). While lesser known organizations, particularly those marketing commercial products or soliciting only for contributions, may need to provide additional information, this Court finds that, in order for subsection (6) to meet constitutional scrutiny, the plaintiff need only note on the application that it seeks to canvass as part of the Jehovah's Witness ministry. Based upon this interpretation, the Court finds Section 116.03 of the Ordinance to be constitutional on its face.

The Court notes that several groups were granted permission to solicit within the Village outside the time limits set forth in Section 116.05 of the Ordinance. Specifically, at least six separate solicitors for school fundraisers were permitted to canvas the neighborhoods in Stratton after 5:00 p.m. *See* Defendants' Trial Exhibits 35 A-F. In the event that other groups, including plaintiffs, are denied a permit

4. As the Court noted during the hearing, the exercise of a constitutional right is not a "privilege" and to that extent the Ordinance mischaracterizes the issue. Such mischaracterization does not, however, by itself render the Ordinance unconstitutional.

for the same number of hours, the Village will subject itself to future claims that the application of the Ordinance is not neutral and is violative of the First Amendment. At this juncture, the Court is not willing to reach such a conclusion, in that no such request for a similar permit has been made by either plaintiff.

The Court's greatest concern is the language set forth in Section 116.05 of the Ordinance which relates to time limitations of solicitations. Section 116.05 states that "[n]o activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. . . . ." The Court finds this provision of the Ordinance to be an invalid restriction of a canvasser's right to visit homes during reasonable hours. Section 116.05 unnecessarily chills the plaintiffs' First Amendment right to speech. Both solicitors or solicitees may be unavailable during these hours. In the summer months, these time limits exclude up to four hours of daylight, 5:00 p.m. to 9:00 p.m., during which constitutionally protected activities may occur.

It has long been recognized that any regulation of canvassing or soliciting "must be done, and the restriction . . . applied, in such a manner as not to intrude upon the rights of free speech and free assembly." *Thomas v. Collins*, 323 U.S. 516, 540-41, 65 S.Ct. 315, 89 L.Ed. 430 (1945). It is also beyond dispute that solicitation is a form of speech protected by the First Amendment. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981).

A municipality may lawfully act to protect the peaceful enjoyment of local homes by its citizens. *Wisconsin Action*

Coalition v. City of Kenosha, 767 F.2d 1248, 1258 (7th Cir.1985). At the same time, any such local regulation must be precisely tailored to advance the governmental interest in a manner least restrictive of First Amendment rights. *New Jersey Citizen Action v. Edison Tp.*, 797 F.2d 1250 (3d Cir.1986).

A number of circuit courts have invalidated local ordinances purporting to ban solicitation or canvassing during daylight hours. *See Wisconsin Action Coalition*, *supra*; and *New Jersey Citizen Action*, *supra*. Recently, in *Ohio Citizen Action v. City of Seven Hills*, 35 F.Supp.2d 575 (N.D.Ohio 1999), the Court invalidated a local ordinance imposing a 5:00 p.m. curfew on canvassing. As noted in *National People's Action v. Village of Wilmette*, 914 F.2d 1008, 1012 (1990), "[e]ven a temporary deprivation of a First Amendment freedom of expression is generally sufficient to prove irreparable harm."

The Court also notes that any citizen may post "no trespassing" signs and prevent entry by canvassers or solicitors. Local governments and police are certainly authorized to prosecute trespassers under appropriate criminal laws. It is, however, for citizens and not government to choose whether private property is to be a forum for the expression of First Amendment rights.

The Court finds that to the extent canvassing is limited to 5:00 p.m. in the evening, Section 116.05 of the Ordinance is unconstitutional on its face. The Court, therefore, **ORDERS** that Section 116.05 of the Ordinance be modified to allow covered activities, including welcome door-to-door solicitation, to occur during reasonable hours of the day. This

may be easily accomplished by listing reasonable times on a month to month basis.

As a corollary issue, the Court notes that page three of the Registration Form consists of a listing of specific organizations or causes that a Registrant may check to more specifically identify itself. *See e.g.*, Defendants' Trial Exhibit 34-A. Item No. 6 reads "Jehovah [sic] Witnesses." No other religious group is listed separately or singled out on this list. In fact, item No. 17 of the listing reads, "Persons Affiliated with _____ Church _____." Although the Registration Form is an administrative form designed to facilitate compliance with the Ordinance, its language and its form must be content neutral. The Court finds that item No. 6 unnecessarily isolates the Jehovah's Witnesses as a group and **ORDERS** this item stricken from the Registration Form.

Finally, at the conclusion of the hearing and after completion of the presentation of evidence, defendants argued for the first time that plaintiff Watchtower Bible and Tract Society of New York, Inc. and the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. are not proper parties to this action because both registrations with the Ohio Secretary of State had lapsed.[5] Plaintiff the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. argued that during the time that its registration had lapsed, it was still a *de facto* corporation and still a viable legal entity able to bring suit. *See Antioch Baptist Church of Canton v. Jordan*, 1999 WL

5. The Court notes its displeasure with defendants for the untimeliness of this argument. The Court, which has otherwise been impressed with the lawyering in this matter, is dismayed that this issue was not raised earlier in the proceedings.

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333335 (1999) (citing *Hines v. Board of Education of the Cleveland City School District* (1985), 26 Ohio Misc.2d 15, 18, 499 N.E.2d 39, citing *I.J. Goldstein Company v. Mitchell* (1921), 14 Ohio App. 231). Plaintiffs presented testimony from Mr. Virsil Koontz, an elder in the Jehovah's Witness Congregation of Wellsville, who stated that he had no knowledge that the state registration of the local congregation or the national governing body of Watchtower corporation had lapsed at any time and that the congregation has continued to operate as if it was duly licensed.

The Court makes only a preliminary finding at this stage that defendants' motion is not well-taken as to the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. The Court, hereby, **ORDERS** defendants to brief the issue of whether the lapse of a corporate registration with the Secretary of State affects the legal capacity of the corporation. This brief shall be filed no later than July 29, 1999. Plaintiffs shall respond by August 5, 1999 with defendants reply brief due on August 12, 1999.

In sum, plaintiffs' motion for preliminary injunction is **GRANTED IN PART AND DENIED IN PART.** The Court finds that Ordinance No. 1998-5 applies to plaintiffs. The Court further finds Ordinance No. 1998-5, Section 116.05 to be an invalid, unconstitutional infringement upon plaintiffs' First Amendment rights. Finally, the Court reserves final ruling on the issue of whether plaintiff Watchtower Bible and Tract Society of New York, Inc. is a proper party to this action.

IT IS SO ORDERED.

APPENDIX C — FINAL ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION DATED AUGUST 18, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

No. C2-99-526

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.,

Plaintiffs,

v.

VILLAGE OF STRATTON, OHIO, et al.,

Defendants.

Aug. 18, 1999.

* * *

ORDER

Defendants have withdrawn their defenses regarding the capacity to sue by plaintiffs Watchtower Bible and Tract Society of New York, Inc. and Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. The issue of capacity to sue was left open after the Court heard testimony on plaintiffs' motion for preliminary and permanent injunction. With

defendants having withdrawn their defense to this issue, the Court now issues a Final Order granting in part and denying in part plaintiffs' motion for preliminary and permanent injunction (Doc. 3). The Court incorporates by reference its reasoning and rulings from its August 6, 1999 Memorandum and Order.

This case is **DISMISSED.**

IT IS SO ORDERED.

APPENDIX D — OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION DATED FEBRUARY 23, 2000 AND FILED FEBRUARY 24, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

CASE NO. C2-99-526
JUDGE EDMUND A. SARGUS, JR.
MAGISTRATE JUDGE MARK R. ABEL

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.,

Plaintiffs,

vs.

VILLAGE OF STRATTON, OHIO, et al.,

Defendants.

OPINION AND ORDER

This matter before the Court for consideration of the Plaintiffs' Motion for Attorneys' Fees and Costs. For the reasons that follow, the Motion is granted in part.

I.

On August 6, 1999, this Court issued a Memorandum Order setting forth the history of this case. To summarize,

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Plaintiffs brought this action for preliminary and permanent injunctive relief seeking to enjoin the Defendants from enforcing a local Ordinance interfering with Plaintiffs' exercise of their constitutionally protected rights to freedom of religion and speech. Plaintiffs are religious organizations which include practicing Jehovah's Witnesses. The Plaintiffs successfully contended that an ordinance enacted by the Village of Stratton, Ohio, unconstitutionally infringed upon their First Amendment rights to go from door-to-door to various residences within the Village of Stratton as part of their religious belief that they should share the Gospel with others.

Following a hearing on July 27, 1999, this Court issued a preliminary injunction restraining the enforcement of certain portions of Ordinance No. 1998-5, Section 116.05, finding the same to be an unconstitutional infringement upon the Plaintiffs' First Amendment rights. Before so finding, the Court noted that the Defendants had agreed to allow any applicant for a permit to conduct door-to-door solicitation to obtain from the Village a list of each resident. Had the Village not so agreed, the Court noted that this restriction upon the right to engage in protected activity would otherwise be unconstitutional. In the same vein, the Court held that Section 116.03(b)(6) of the Ordinances of the Village of Stratton could be construed to meet constitutional scrutiny, insofar as the members of the Jehovah Witnesses seeking to canvass within the Village were only required to describe their activities as part of the Jehovah Witnesses' Ministries. Otherwise, the Ordinance, if read to require a detailed description of the type of activities to be conducted with attendant review by public authorities, could be unconstitutional.

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The Court declared that Section 116.05 of the Ordinance prohibiting solicitation after 5:00 p.m. was an unreasonable infringement upon the Plaintiffs' First Amendment rights. The Court thereupon enjoined the Defendants from enforcing such provisions. Finally, the Court also found that the methods used by Village officials as a means of administering the challenged Ordinance unconstitutionally singled out Jehovah Witnesses on a form given to Village residents on which they could indicate that certain types of solicitation were not permitted on their private properties.

In the Court's view, the Plaintiffs' prevailed on several significant challenges which they brought to the constitutionality of Ordinance No. 1998-5 enacted by the Village of Stratton.

II.

In *Alveska Pipeline Serv. Co. v. Wilderness Society*, 421 U.S. 240, 247 (1975), the Supreme Court reaffirmed the American rule which leaves to each party in a lawsuit the costs of its own attorneys' fees, unless the statutory provision provides to the contrary. Shortly after this decision, Congress enacted the Civil Rights Attorneys' Fees Awards Act of 1976 authorizing district courts to award a reasonable attorneys fee to parties which have prevailed in civil rights litigation. 42 U.S.C. §1988(b).

In *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983), the Supreme Court instructed that the starting point for a determination of the amount of attorneys' fees is "the number of hours reasonably expended on litigation multiplied by a

reasonable hourly rate." The Supreme Court also recognized that, in general, time expended on unsuccessful claims is not chargeable to the opposing party. The Court was careful to note, however, that in some cases, "[m]uch of counsel's time will be devoted generally to the litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis." *Id.* at 435. The Court instructed that in such circumstances the district court should then focus on the result obtained by the Plaintiff in relation to the billable hours claimed to be expended on the litigation. The Court concluded:

> There is no precise rule or formula for making these determinations. The district court may attempt to identify specific hours that should be eliminated, or it may simply reduce the award to account for the limited success. The court necessarily has discretion in making this equitable judgment.

Id. at 436-37.

It is true that the Plaintiffs did not prevail on all of the claims which they brought in this action. It is the Court's view, however, that in addition to being the prevailing party insofar as the Plaintiffs induced this Court to issue an injunction, Plaintiffs were substantially successful in their attack on the challenged Ordinance. The law is clear that a Plaintiff need not prevail on every single claim to be the prevailing party, as the same is used in 42 U.S.C. §1988. *Farrar v. Hobby*, 506 U.S. 103 (1992).

The Plaintiffs have itemized the attorneys' fees which they ask this Court to award them. Three attorneys have submitted itemized statements together with brief descriptions of their prior experience and expertise. In light of these submissions, together with the Court's observation of the work performed by all three counsel, the Court readily concludes that an hourly rate of $225.00 is reasonable in light of the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) and adopted by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. at 432. Further, the Court is of the same opinion with respect to the hourly rate charged by a paralegal, that being $75.00 per hour. The Court notes that, while the Defendants have not agreed to the rates in question, they have not specifically challenged the same.

The Plaintiffs also seek to recover out-of-pocket expenses in the amount of $15,464.04. Again, while the Defendants have not agreed to the reasonableness of such amount, they have not claimed that any expense set forth was not actually incurred or was available at lower cost.

The Defendants have objected to inclusion of expenses associated with Professor Brandl, who testified at the trial held in St. Clairsville, Ohio. While Professor Brandl's professional fees are not included in the billing submissions, his expenses in the amount of $770.00 have been submitted by the Plaintiffs. In addition, the billing statement submitted by the attorneys include some amount of time, albeit undifferentiated, preparing for his testimony. The Defendants assert that because the subject matter on which Professor Brandl testified did not result in a victory for the Plaintiffs, any cost associated with Professor Brandl should be eliminated.

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The Court has carefully reviewed the billing submissions by all three counsel and concludes that the dissection sought by the Defendants is both impractical and unreasonable. Because the Plaintiffs prevailed on a substantial portion of their claims, and the testimony adduced was otherwise indivisible as to the various claims, such division of the billing by claim is impracticable. Further, the Court notes that counsel for the Plaintiffs have not asked for a multiplier of the lodestar, which makes the Court more inclined to award Plaintiffs fees for the entire course of litigation.

The Defendants also urge this Court to consider that, given the hourly rate of $225.00 sought by each of the three Plaintiffs' counsel, they should not be required to pay for duplication of services. The billing records reflect that all three counsel, two of whom are from New York, traveled to St. Clairsville, Ohio for a one-day trial. In addition, all three counsel, billing at the rate of $225.00 per hour, attended four depositions on July 13, 1999.

This Court again emphasizes that all three of Plaintiffs' counsel exhibited a high degree of professional skill and experience in handling the issues raised in this case. Nonetheless, the Court is unable to conclude that three highly skilled lawyers were required to attend the depositions and hearing occurring in this case. The Court notes that the hearing lasted for a single day. Two days of depositions were taken in this case, including four which occurred on July 13, 1999 and three which occurred on July 15, 1999. The Plaintiffs filed a Complaint, a Motion for a Preliminary Injunction, a Reply to Defendants' Memorandum in Opposition to Plaintiffs' Motion for a Preliminary Injunction,

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and a Response to the Defendants' Memorandum Concerning the Plaintiffs' Capacity to Sue.

The Supreme Court has stressed that attorneys' fees awarded under §1988 should be based on a market rate for services rendered. While again emphasizing that the quality of the work performed by Plaintiffs' counsel exhibited a high degree of professionalism, the Court does not believe that the Defendants should be required to pay for three attorneys at the rate of $225.00 an hour. While not all of the time billed by the three counsel duplicates the work of the other two, the Court notes substantial periods of billable hours for which all three attorneys were present and billing.[1] Nothing in this Opinion is intended to criticize the use of three highly skilled attorneys in the same case. Parties are at liberty to employ as many counsel as they deem necessary. Because the attorney-client relationship is a close one, parties frequently use counsel with whom they may have a long-time relationship, while also hiring additional counsel more familiar with a particular area of law or a district court. The Court by no means intends to discourage such practices. The question raised in the Motion, however, is how much the Defendants must pay for the Plaintiffs' attorneys' fees.

The Court finds that the out-of-pocket expenses in the amount of $15,464.04 submitted by the Plaintiffs is reasonable and the same is awarded against the Defendants.

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1. The Court refers to page 12 of the Defendants' Brief in Opposition to Plaintiffs' Motion for Attorneys' Fees. The chart therein set forth demonstrates a large number of overlapping hours billed by three counsel.

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The Court also finds that paralegal costs in the amount of $4,087.50 is also reasonable and the same is awarded in favor of the Plaintiffs.

The Plaintiffs seek attorneys' fees in the amount of $78,681.75. For the reasons set forth above, such amounts include duplicate, overlapping billable hours. While these hours of services were no doubt performed, the costs of such overlapping hours may not be billed to the Defendants. The Court believes that a fair method of analysis begins with consideration of the fees incurred by Susan B. Gellman, a Columbus attorney who is a recognized specialist in the First Amendment field. Her fees total $33,645.75. While Ms. Gellman did not perform all of the work involved in this case, she attended the hearing and performed much of the work in this case. The Court notes that she attended the depositions of four witnesses on July 13, 1999 but did not attend the depositions of four witnesses on July 12, 1999. Finally, Ms. Gellman prepared the Complaint and the Motion for the Preliminary Injunction.

The Court believes that all of Ms. Gellman's fees, billed without reference to any overlapping hours billed by Attorneys Polidoro and Moake, are reasonable and appropriate. Because the work performed by Plaintiff's counsel in this case was not done exclusively by Ms. Gellman, the Court is inclined to award an additional amount over and above the $33,645.75 expended by Ms. Gellman. The Court is of the view that attorneys' fees in the amount of $39,340.87, representing one-half of the total billing submitted by all three of Plaintiffs' counsel, is a reasonable fee in light of the services performed and the success achieved by the Plaintiffs.

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III.

It is the **ORDER** of this Court that the Defendants shall pay to the Plaintiffs the sum of $39,340.87 as and for attorneys' fees, $4,087.50 in paralegal costs, and $15,464.04 in out-of-pocket expenses.

IT IS SO ORDERED.

2-23-2000
DATE

s/ Edmund A. Sargus, Jr.
EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE

APPENDIX E — RELEVANT ORDINANCE

ORDINANCE NO. 1998-5

ORDINANCE REGULATING UNINVITED PEDDLING AND SOLICITATION UPON PRIVATE PROPERTY IN THE VILLAGE OF STRATTON, OHIO, AND AMENDING ORDINANCE NO. 1996-__ OF THE ORDINANCES OF THE VILLAGE OF STRATTON, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that Ordinance No. 1996-06 of the Ordinances of the Village of Stratton, Ohio, which was passed on September, 1996, is hereby amended, by replacing the language of said Ordinance No. 1996-06 in its entirety, with the following language:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that, pursuant to authority granted in Section 715.61 of the Ohio Revised Code, and pursuant to Home Rule powers vested in the Village under Section 3, Article XVIII of the Ohio Constitution, the Codified Ordinances of the Village of Stratton, Ohio are hereby amended by the adoption of the following Chapter and Codified Ordinance Sections.

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CHAPTER 116

Peddlers and Solicitors

116.01 Uninvited peddling and soliciting declared a nuisance.

116.02 Enforcement.

116.03 Solicitor's Registration and Permit — Prohibition of unregistered solicitation, etc.

116.04 Issuance of permit; fee, content and display; effect.

116.05 Time limitations.

116.06 Denial or Revocation of permit.

116.07 Owner/occupant prohibition — "No Solicitation" Registration.

116.98 Penalty.

CROSS REFERENCES

Power to inspect food products — see Ohio R.C. 715.46
Power to regulate — see Ohio R.C. 715.61 et seq.
Home solicitation sales — see Ohio R.C. 1345.21 et seq.
Charitable solicitations — see Ohio R.C. Ch. 1716
Trespassing — see Ohio R.C. 2909.21
Frozen desserts — see Ohio R.C. 3717.51 et seq.
Littering — see Ohio R.C. 3767.20

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116.01 UNINVITED PEDDLING AND SOLICITING DECLARED A NUISANCE.

The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

116.02 ENFORCEMENT

The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

116.03 REGISTRATION REQUIRED — PROHIBITION OF UNREGISTERED SOLICITATION, ETC.

(a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.

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(b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:

(1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and,

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

116.04 ISSUANCE OF PERMIT; FEE, CONTENT AND DISPLAY.

Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit. The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrant's Solicitor's Registration Form.

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

116.05 TIME LIMITATIONS.

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. This time limitation shall be stated on the permit.

116.06 DENIAL OR REVOCATION OF PERMIT.

Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:

(a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.

(b) Fraud or misrepresentation contained in the Solicitor's Registration Form.

(c) Fraud, misrepresentation or false statements made in the course of conducting the activity.

(d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.

(e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

(f) The permittee ceases to possess the qualifications required in this chapter for the original registration.

The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with law.

116.07 OWNER'S/OCCUPANT'S PROHIBITION AGAINST ENTRY.

(a) Notwithstanding the provisions of any other Section of this Chapter 116, any person, firm or corporation who is

Appendix E

the owner or lawful occupant of private property within the territorial limits of the Village of Stratton, Ohio, may prohibit the practice of going in or upon the private property and/or the private residence of such owner or occupant, by uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors, by registering its property in accordance with Subdivision (b) of this Section and by posting upon each such registered property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such property.

(b) The registration authorized by Subsection (a) hereof shall be made by filing a "No Solicitation Registration Form", at the office of the Mayor, on a form furnished for such purpose. The form shall be completed by the property owner or occupant and it shall then contain the following information:

(1) The name and address of the owner or occupant who wishes to prohibit uninvited canvassing, soliciting, peddling, hawking, merchandising and/or transient vending upon the private property of the owner or occupant;

(2) The specific address of each property at which the owner or occupant prohibits such conduct; and,

(3) A written and signed statement which reads:

"I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and

Appendix E

I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

_____

_____

_____

_____

_____

_____

_____

_____"

(c) No uninvited canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services, shall go in or upon the private property of an owner or occupant of property who has registered and posted such property in accordance with Subsections (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

(d) The holder of a permit issued pursuant to Section 116.04 of this Chapter shall not be exempt from the prohibition contained in Subsection (c) of this Section. The holder of such permit shall not go in or upon any private property which has been registered and posted in accordance with Subsection (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

116.99 PENALTY.

(a) Violation of Section 116.01 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(b) Violation of Section 116.03 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(c) Violation of Section 116.07(c) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(d) Violation of Section 116.07(d) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

SECTION 2: This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the Village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

SECTION 3: This Ordinance shall be in full force and effect immediately upon its passage.

_____
MAYOR

ATTEST: s/ Lola Kakascik
CLERK

Supreme Court, U.S.
FILED
JUN 20 2001
OFFICE OF THE CLERK

No. 00-1737

In The

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
and
WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

vs.

VILLAGE OF STRATTON, OHIO and JOHN M. ABDALLA, Mayor of The Village of Stratton, Ohio in His Official Capacity,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

RESPONSE TO QUESTIONS RAISED FOR REVIEW

Petitioners have asked this court to address two (2) questions. The first is the application of the Free Exercise clause of the First Amendment to the legislation of a small village in Ohio. The Village of Stratton, Ohio adopted legislation consistent with *Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940) which authorizes municipal legislation to protect its citizenry from fraudulent solicitation by requiring a stranger within the community, before permitting him to publicly solicit funds for any purpose to establish his identity and authority to act for the cause for which he purports to represent. Petitioners seek to avoid the application of *Employment Div., Oregon Dep't of Human Resources v. Smith,* 494 U.S. 872 (1990) to this content-neutral legislation. The evidence includes the testimony of Tammy Tuckosh, a lay minister who was asked:

> Question: There is nothing in your faith as a Jehovah's Witness to prevent you from obtaining a permit to enable you to go door to door, correct?
>
> Answer: Correct.

TR 82.

Make no mistake that the record below acknowledges the discretion of Jehovah's Witnesses to seek donations upon the conclusion of a presentation. The Jehovah's Witnesses engage in door-to-door canvassing in order to

RESPONSE TO QUESTIONS – continued

preach, proselytize, (Robert Ciranko at TR 19-21, 23-25, 28-29, 36-37, 45), and, as a general policy, may offer "information" about how individuals can donate financially to the organization. (Robert Ciranko at TR 47, Tammy Tuckosh at TR at 72.) ("Well, usually we take the opportunity at the end of discussing a Bible thought . . . then we mention to them if they would like to donate towards the worldwide work. . . . ")

The second issue suggested was not presented by Petitioners upon appeal to the Sixth Circuit Court of Appeals. Instead Petitioners seek to draw from the decision of the Court of Appeals an application of a case cited within the court's opinion not previously briefed nor argued before that court, a claimed right of anonymity in the canvassing process.

STATEMENT PURSUANT TO RULE 29.6

The Village of Stratton, Ohio and John M. Abballa, Mayor of the Village of Stratton, Ohio, is his official capacity, state that the Village of Stratton, Ohio is a political subdivision of the State of Ohio and that its Mayor is an elected public official.

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STATEMENT OF THE CASE

Stratton, Ohio, is a municipal village located at the Eastern border of the State, adjacent to the Ohio River. It is situated approximately a quarter mile from the State of West Virginia, and about 15 to 16 miles from the Pennsylvania state line. Ohio Route 7 runs parallel to the village, only a few feet from the Village's border. (Mayor John Abdalla at TR 88-89; Defendants' Trial Exhibits 7, 8; Stratton, Ohio Street Maps.) Stratton has a very small residential section that contains the 70 houses, (Village Solicitor Frank Bruzzese at TR 137-138, 139-140), and trailers in which its approximately 278 residents live. About 75 percent of the Village's residents are retirees. (Mayor John Abdalla at TR 89-90.)

Chapter 116 of the Stratton Village Code was originally enacted in response to concerns of Village residents and officials about uninvited, and at times fraudulent, solicitors approaching their homes for a variety of purposes, most of which were of a commercial nature. (Mayor John Abdalla at TR 94-97, 106-107; Defendants' Trial Exhibits 12, 13; Stratton Police Department Monthly Reports, August 1996 and October 1996.) This "close knit" community, (Mayor John Abdalla at TR 100), saw a need to offer protection to Stratton's vulnerable senior citizen population, which was perceived as being especially susceptible to the scams and frauds that are commonly perpetrated through door-to-door solicitation. (Mayor John Abdalla at TR 94-97; Village Solicitor Frank Bruzzese at TR 137-138, 139-140, 159-162.)

Permits are automatically issued to all applicants upon completion of the registration form. There is no

charge to the registrant. (Village Solicitor Frank Bruzzese at TR 156, 157.) The Mayor has limited discretion to deny or revoke permits and may do so only in situations in which a registrant has committed fraud or misrepresented himself or herself in the registration form, or during the course of the solicitation activity. (R. 1 Ordinance Sec. 116.06; Mayor John Abdalla at TR 105-106; Village Solicitor Frank Bruzzese at TR 157.)

No individual or organization has been denied a permit, or has had a permit revoked, under the ordinance. (Mayor John Abdalla at TR 103, 105.)

Expert testimony by Helen MacMurray, the Chief of the Consumer Protection Section of the Ohio Attorney General's Office, established that door-to-door scams are a threat to residents and in particular to senior citizens. (Helen MacMurray at TR 211-214, 217-221.) Ms. MacMurray stated that permit and registration ordinances such as that in question deter fraudulent door-to-door activity, and assist law enforcement officials in apprehending those guilty of committing such frauds. (Helen MacMurray at TR 215-217, 223.)

The Jehovah's Witnesses engage in door-to-door canvassing in order to preach, proselytize, (Robert Ciranko at TR 19-21, 23-25, 28-29, 36-37, 45), and, as a general policy, may offer "information" about how individuals can donate financially to the organization. (Robert Ciranko at TR 47; Tammy Tuckosh at TR 72.) ("Well, usually we take the opportunity at the end of discussing a Bible thought. . . . then we mention to them if they would like to donate towards the worldwide work. . . . ")

No Jehovah's Witness representative has registered under the Village of Stratton's legislation despite activities within the Village. No Jehovah's Witness has been arrested or prosecuted under the present legislation or its predecessor. Despite Petitioners' attempt to color the relationship between Jehovah's Witnesses and the Village, the efforts of the Village of Stratton to narrow Petitioners' concerns in the modification of the original 1996 legislation to the legislation now under review received favorable comment by the District Court. TR 282-3.

In April, 1998, Richard D. Moake, Counsel for Watchtower Bible and Tract Society of New York, Inc., the national Jehovah's Witnesses oversight group, (Robert Ciranko at TR 17-18, 26-29, 41; Tammy Tuckosh at TR at 84), contacted the Village contending that aspects of the predecessor ordinance to current Chapter 116 were unconstitutional under the First and Fourteenth Amendments. (Village Solicitor Frank Bruzzese at TR 145; Defendants' Trial Exhibit 17.)

On April 17, 1998, Bruzzese wrote to Moake inviting Moake's suggestions for modifications to the language of the Ordinance that would allay the Appellant's concerns, yet protect the property owners from unwanted intrusions. Bruzzese wrote, "The road to a solution is cooperation." (Defendants' Trial Exhibit 17, pg. 3.)

In subsequent letters Moake did make several drafting suggestions to the Village, some of which were incorporated into the present Ordinance. (Village Solicitor Frank Bruzzese at TR 145-148; Defendants' Trial Exhibits 17, 22.) However, Moake insisted that the Ordinance did not apply to the Petitioners, despite the Village's explicit

statements that all solicitors, including the Petitioners, were meant to fall within its ambit. (Defendants' Trial Exhibits 18, 22.)

The Village redrafted its ordinance in an effort to comply with the Petitioners' concerns. The essential thrust of the new Ordinance was to give property owners the means by which they could prevent unwanted solicitation on their property and to require registration prior to solicitation.

The village process provides a means by which residents may give notice to solicitors that their solicitations are undesired, and through which homeowners may prevent the solicitors' unwanted advances. *Rowan v. United States Post Office*, 397 U.S. 728, 737 (1970) ("The Court has traditionally respected the right of a householder to bar, by order or notice, solicitors, hawkers, and peddlers from his property"); *Martin v. Struthers*, 319 U.S. 141, 148 (1943). The decision as to whether or not a residence may be approached by solicitors is left solely with the property owner.

Petitioners filed a Complaint against the Village in the United States District Court for the Southern District of Ohio seeking declaratory and injunctive relief on the basis that Chapter 116 of the Stratton Village Code is unconstitutional under the First and Fourteenth Amendments. The District Court granted in part and denied in part the Petitioners' motion and dismissed the case. Specifically, the Court ordered that restrictions limiting the time of solicitation be modified "to occur during reasonable hours of the day," and that an administrative form

not legislatively approved entitled "No Solicitation Registration Form," remove a specific reference to the Jehovah's Witnesses from the listing of groups that generally canvassed/solicited the area.

The Sixth Circuit Court of Appeals affirmed.

RESPONSE TO REASONS TO GRANT WRIT

Religious solicitation of the type practiced by the Petitioners unquestionably is activity that is protected by the First Amendment. However, this right is neither absolute, nor immune from regulation. As stated by this court in *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976):

> There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home.

Id. at 619.

In *International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), the Supreme Court considered the right of a religious sect to practice a sect-specific ritual that required the face-to-face solicitation of funds, in New York City area airport terminals. The Court's analysis first used the "forum based" approach set forth

in *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45 (1983), to determine the appropriate level of scrutiny to apply to activity on government property that clearly fell within the scope of the First Amendment. *International Society for Krishna Consciousness, Inc.*, 505 U.S. at 680. After finding that the airport terminals were neither traditional public forums, nor designated public forums, it applied the reasonableness standard that is to be used by courts which are called upon to analyze governmental restrictions on "all remaining public property." *Id.* at 678, 680. The Court wrote: "Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view." *Id.* at 679. *See also, United States v. Kokinda*, 497 U.S. 720, 727 (1990) ("But regulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness") and *Perry*, 460 U.S. at 46 ("In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view").

Regulations that protect homeowners' rights of safety, privacy, the freedom to be undisturbed in their homes, should be analyzed according to a standard that is no less liberal than that controlling permissible First Amendment restrictions on government property, as long as those regulations do not substitute the judgment of the

community for that of the individual. *Kokinda*, 497 U.S. at 725-726 ("The Government, even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business, but its action is valid in these circumstances unless it is unreasonable, or . . . 'arbitrary, capricious, or invidious' ") quoting *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974); *See also, Martin*, 319 U.S. at 143-144.

Thus, when weighing the First Amendment rights of canvassers against the right of homeowners to security, privacy, and peacefulness in their homes, the ordinance in question need not be the most restrictive means available, nor must it be the most effective, most reasonable, or most obvious choice, it need only be reasonable. *Kokinda*, 497 U.S. at 735-736.

The Supreme Court has repeatedly upheld the constitutional validity of content-neutral laws of general applicability that are not specifically directed toward religious practice, despite incidental effects on the religious practices of religious groups. *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 879, 880 (1990); *United States v. Lee*, 455 U.S. 252 (1982); *Gillette v. United States*, 401 U.S. 437 (1971); *Braunfeld v. Brown*, 366 U.S. 559 (1961); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Minersville School Dist. Bd. Of Educ. v. Gobitis*, 310 U.S. 586 (1940). In *Smith*, the Supreme Court described the societal harm that would result from the use of a "compelling interest" standard of review to free exercise challenges to content-neutral laws of general applicability. The Court wrote: "Any society adopting such a system would be courting anarchy. . . . " *Smith*, 494 U.S. at 888.

The right of free exercise of religion does not relieve an individual of the obligation to comply with a valid neutral law of general applicability on grounds that the law proscribes (or prescribes) that which the religion proscribes (or prescribes). *United States v. Lee*, 455 U.S. 252, 263 n.3 (1982).

This court has never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the state is free to regulate. *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990).

Chapter 116 of the Stratton Village Code places no restrictions on the right of the Petitioners to worship, pray, and observe the rituals of their religion, other than those which unquestionably interfere with the rights of others. The Petitioners cannot argue that they are precluded from exercising their religion in a lawful manner. In fact, the Jehovah's Witnesses' primary objection to Stratton's limited regulatory scheme is that including them within its ambit would be an insult to God. (Robert Ciranko at TR 27)

Instead, Chapter 116 merely requires any individual wanting to solicit door-to-door in Stratton to register and obtain a permit for the protection and safety of the community. Permits are granted, except in instances where registrants have provided fraudulent or misleading information, or committed fraud during the course of solicitation activity. The Ordinance also provides a means by which residents can convey their desire to solicitors that they not be disturbed at their homes. In so doing, it reserves to the homeowner the decision as to whether or

not he or she will be solicited, *not the government*. Chapter 116 should be evaluated under a standard of reasonableness, and its constitutionality should be upheld.

Petitioners next suggest that anonymity of the solicitor is an important feature in this case requiring this court's consideration. No assignment of error in the Sixth Circuit Court of Appeals addressed the issue.[1]

---

[1] Petitioner's Assignments of Error in the Sixth Circuit Court of Appeals were:

I. The Village's ordinance imposes a prior restraint upon Jehovah's Witnesses' Freedom of religion, speech, and press, so this court must apply strict scrutiny in assessing its validity.

II. The Village's ordinances that criminalizes the exercise of free speech without a permit is unconstitutionally vague because: It prohibits speaking about a "cause", a term held inherently vague by the U.S. Supreme Court, fails to define or distinguish between a "canvasser" and "solicitor," and impermissibly delegates to the Mayor discretion to issue or deny a permit.

III. The Village's ordinance is unconstitutionally overbroad because its reach prohibits door-to-door political speech without a permit.

IV. The Village violates the free exercise clause by subjecting Jehovah's Witnesses to the requirement of obtaining a permit prior to engaging in door-to-door religious speech.

A. The Supreme Court has continuously held that Jehovah's Witnesses cannot be required to obtain a permit in order to engage in door-to-door religious speech.

B. The Ordinance fails strict judicial scrutiny because it is not the least restrictive means to accomplish the Village's goals.

It should be deemed waived.

If considered, there is no constitutional right to anonymity. *See McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

Registration of peddlers and canvassers is a legitimate government activity authorized by the police powers of a village. It protects the householder from intrusion. Whereas here there is no governmental gatekeeper to the householder, there is no constitutional impediment.

C. The Village has failed to meet its burden of proof of demonstrating a real, rather than conjectural, governmental interest.

D. The Ordinance is not narrowly tailored to accomplish its stated goals because it is only "helpful" in combating door-to-door fraud.

E. The Village has failed to meet its burden of establishing that there are ample alternatives to door-to-door communication.

V. The ordinance is unconstitutional as applied to Jehovah's Witnesses because they were singled out in the forms created by the Village and the Mayor evinced discriminatory intent in the permit-granting process.

VI. Jehovah's Witnesses must be granted an exemption from the ordinance because obtaining a permit to engage in the door-to-door ministry violates their deeply held religious convictions.

CONCLUSION

This case is unsuitable for review because the basic question has been answered by *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990).

"The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires." *Employment Div., Oregon Dep't of Human Resources v. Smith*, 494 U.S. 872, 877 (1990). It does not mean that practices are exempt. *Reynolds v. United States*, 98 U.S. 145 (1879) (rejecting the argument that the religious practice of polygamy was exempt from criminal law).

That right has not been taken from Petitioners.

Both the District Court and Sixth Circuit Court of Appeals found that the Village of Stratton's legislation to be content-neutral in a law of general applicability thereby subjecting it to intermediate scrutiny.

Content-neutral legislation protecting homeowners from intrusion and attempting to inhibit fraudulent activity is proper governmental legislation. Established case authority makes Petitioners' request for certiorari a redundancy.

It is requested that their petition be denied.

Respectfully submitted,

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Supreme Court, U.S.
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No. 00-1737

IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF

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STATEMENT PURSUANT TO RULE 29.6

Petitioner's statement pursuant to Rule 29.6 was set forth at page *ii* of its Petition for a Writ of Certiorari, and there are no amendments to that statement.

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II. Contrary to Respondents' assertion, Petitioners argued below that the Ordinance is overbroad because it prohibits door-to-door political speech, which includes anonymous political discourse, without a permit.	1
III. Respondents' assertion, that Petitioners are "solicitors" of funds, is contrary to both the district court's finding that Jehovah's Witnesses are "canvassers" under the Village Ordinance and the uncontroverted trial court record.	2
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I. By failing to address the split among the circuit courts of appeals concerning the applicability of *Employment Division v. Smith* to cases involving the free exercise of religion in conjunction with freedom of speech and freedom of press, Respondents fail to respond to the primary question presented for review.

Respondents conspicuously fail to address the fact that the circuit courts of appeals have split on the level of scrutiny *Employment Division v. Smith*, 494 U.S. 872 (1990) requires for cases involving multiple First Amendment freedoms. Most circuits have construed *Smith* to require strict scrutiny in such cases. Only the Sixth Circuit Court of Appeals has construed *Smith* to require merely intermediate scrutiny for such cases. Respondents' silence on the primary question presented for review underscores the necessity of this Court granting the writ of certiorari.

II. Contrary to Respondents' assertion, Petitioners argued below that the Ordinance is overbroad because it prohibits door-to-door political speech, which includes anonymous political discourse, without a permit.

Respondents' contention that the second question presented for review was "not previously briefed nor argued before" the Sixth Circuit (Br. Opp. ii) is not accurate. The Sixth Circuit's discussion of Petitioners' argument under *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), was not brought before this Court as if it were Athena springing fully armed from Zeus' forehead. It was the result of Petitioners' bringing the issue before the Sixth Circuit and that court deciding that *McIntyre* was inapplicable to this case. As the Sixth Circuit said:

> Plaintiffs argue the ordinance is unconstitutionally overbroad because it would have the effect of prohibiting individuals from going door-to-door to

> engage in political speech without first obtaining a permit. An effect, they allege, the Supreme Court effectively made unconstitutional in McIntyre v. Ohio Elections Commission, 514 U.S. 334, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995), by invalidating an Ohio statute that prohibited the distribution of anonymous campaign literature. Because requiring individuals engaging in political speech to register before going door-to-door would effectively prevent them from remaining anonymous, they conclude, the ordinance is unconstitutional. They are mistaken.

Watchtower v. Stratton, 240 F.3d 553, 563 (6th Cir. 2001) (App. A, 15a). Since the Sixth Circuit obviously addressed this issue, it is properly presented to this Court for review.

III. Respondents' assertion, that Petitioners are "solicitors" of funds, is contrary to both the district court's finding that Jehovah's Witnesses are "canvassers" under the Village Ordinance and the uncontroverted trial court record.

In an attempt to shield themselves behind cases dealing with solicitation of money, Respondents suggest that this case involves "fraudulent solicitation" by "a stranger" who wants to "publicly solicit funds." (Br. Opp. i). Respondents insinuate the solicitation of money into this case so as to bootstrap themselves to an argument under such cases. (Br. Opp. i, 5). Respondents' assertion fails for two reasons.

First, the district court specifically found that:

> Ordinance No. 1998-5 does apply to plaintiffs because Jehovah's Witnesses are "canvassers" who visit homes in neighborhoods for the purpose of "explaining" their "cause," the Gospel of Jehovah.

61 F. Supp. 2d 734, 737 (S.D. Ohio 1999), (App. B, 39a-40a). The district court did not find that Jehovah's Witnesses were

"solicitors," which, along with "canvassers," was a category of persons described in section 116.03(a) of the Ordinance. (App. E, 60a). While Petitioners disagree that the activities of Jehovah's Witnesses place them within any category of persons described in the Ordinance, the district court's characterization of them was not changed by the court of appeals.

Second, it is uncontroverted in the record that money was not solicited by Jehovah's Witnesses in the Village. (TR 73-75). That Jehovah's Witnesses accept voluntary donations was discussed by one of Petitioners' witnesses:

> Q: Mr. Ciranko, what is the cost for the Bible-based literature that is left with a householder?
>
> A: There is no charge for our literature. We leave all of our literature free of charge.
>
> Q: How is this work financed?
>
> A: It is funded by Jehovah's Witnesses themselves, by our own members. Our organization is unique in that we do not tithe. We do not pass a collection plate. We do not impose duns or dues upon our members. We do not send out letters of solicitation. We do not solicit for money from house to house.
>
> We have contribution boxes set up at our kingdom halls, and anyone who wishes can put a donation there. No one knows what each one is donating; and if one cannot afford to donate, that's fine. It's done as a free will offering.
>
> Q: What provision would there then be for a householder, someone who is met in the public ministry, to donate to this work?

> A: Well, if an individual has an interest in doing that, we feel that it's appropriate to advise them that they can certainly make a donation to Jehovah's Witnesses for our worldwide work. However, that's not the purpose in going from house to house. Our purpose in going from house to house is to talk about the Bible, to offer a study of the Bible with people. Money is the least of our interests.
>
> Q: What then is the cost for the home Bible study?
>
> A: That is free as well. Our entire organization is of a charitable, nonprofit, tax-exempt nature.

(TR 21-22). Even though some people may spontaneously offer contributions toward Jehovah's Witnesses' ministry, all of the Witnesses who engaged in door-to-door activity in the Village had been instructed not to mention, and did not mention, donations. (TR 60, 73-75).

This case is not about religious solicitation—it is about religious communication, an activity this Court has recognized as protected by the First Amendment's Free Speech and Free Exercise Clauses for over six decades. *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *see also Good News Club v. Milford Central School*, __ U.S. __, 69 U.S.L.W. 4451, 4458 (2001) (Scalia, J., concurring). The First Amendment ramifications of this case are far-reaching:

- Does a resident need a permit to go from door to door to speak with his neighbors about religion, politics, sports, school budgets, etc.?
- May a parent looking for a missing child — or a child looking for a lost puppy — go door to door in the neighborhood without first obtaining the government's permission?

- May the state prevent the publisher of religious, political, or "cause"-based literature from distributing such literature from door to door free of charge without first obtaining permission from the state?

Rather than enact an ordinance that is narrowly drawn to target specific conduct, the Village chose to also regulate pure speech and pure press activities. Whether it can constitutionally do so, in this context, is an issue this Court should resolve.

IV. Respondents' argument confirms that Petitioners have presented important issues regarding the power of a municipality to regulate pure religious speech and press activity.

In an attempt to justify the constitutional validity of the Ordinance, Respondents' Brief in Opposition demonstrates the significance of the questions presented for review. To what extent may the state use its police power to regulate pure religious speech and press activity? What is the level of deference to be accorded to such an exercise of that power? What burden is there upon the state to justify such action by real evidence as opposed to speculative or conjectural?

Respondents have made the decision that no one may call at the home of any resident unless the prospective caller has first received the Village's permission to do so. Respondents then take the position that the standard of scrutiny this Court has applied in cases dealing with government-owned property should govern a review of that decision:

> [T]he ordinance in question need not be the most restrictive means available, nor must it be the most effective, most reasonable, or most obvious choice, it need only be reasonable. *Kokinda*, 497 U.S. at 735-736.

(Br. Opp. at 7).

This Court has neither permitted the state to usurp a private homeowner's rights in such a fashion, nor has this Court ever held that the proper standard for judicial review of such laws is "reasonableness." Yet, it is this standard that the Village urges.

If Respondents were correct, then their approach to this matter could conceivably be justified — their regulation of pure religious and political speech; their ignoring the animus expressed by the Mayor towards Jehovah's Witnesses; their failure to address the lack of legislative history supporting the Ordinance; their "after the fact" reliance on expert testimony of Ms. MacMurray, who rendered her opinion at trial rather than at a legislative hearing prior to passage of the Ordinance; and their continued focus on a section of the Ordinance (posting of 'No Solicitation' signs), which has never been contested in this litigation.[1]

Most disturbing is Respondents' portrayal of their interaction with Jehovah's Witnesses in an attempt to justify their regulation of pure religious speech. First, they reference the testimony of a young woman they refer to as "a lay minister" (Br. Opp. i) to suggest that the decades-long stance of Jehovah's Witnesses' not obtaining municipal permission to engage in their door-to-door ministry is somehow not sincere, truthful, or a deeply held religious belief. That was never in question in the courts below and has not been raised in any case in this country. The testimony of the Watchtower representative clearly established the religious basis for Jehovah's Witnesses' objection to obtaining municipal permission to engage in their public ministry. (TR 27).

---

1. "[T]he provision of a method by which residents may indicate that solicitors, even with permits, are unwelcome, such as set forth in Section 116.07 **is not challenged in this action**." R22, Plaintiffs' Reply Memorandum to the Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction (emphasis in original), docketed 7/21/99.

In addition, Respondents state that Petitioners are attempting "to color the relationship between Jehovah's Witnesses and the Village." (Br. Opp. 3). The record eloquently portrays how Respondents view Jehovah's Witnesses:

> He [Mayor Abdalla] at that point told me that the ones that had moved into Stratton had moved in there under the understanding that they would not be bothered by Jehovah's Witnesses. And even after that point he said that if we were men, he would have taken us and put us in jail. And through this whole situation he was shaking and pointing his finger at us, and he was very upset.

(TR 77).

Nothing in the Village's opposition suggests that the issues presented are not significant. Nothing in its argument establishes that the questions presented for review are not properly before this Court. Nothing it posited, therefore, should deter the granting of the writ of certiorari.

CONCLUSION

Only by this Court's granting the writ of certiorari can the uncertainty and confusion over the meaning in *Employment Division v. Smith* be settled. Only this Court can make clear what the level of the First Amendment's protection of the communication of religious beliefs and press activity is.

James Madison wrote that "it is proper to take alarm at the first experiment on our liberties." *Memorial and Remonstrance Against Religious Assessments*, quoted in *Everson v. Bd. of Education*, 330 U.S. 1, 65 (1947). The liberty to engage in door-to-door noncommercial religious and political speech and free distribution of literature without the permission of the state has been eliminated by the Sixth Circuit's decision. The writ of certiorari should be granted.

Respectfully submitted,

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Supreme Court, U.S.
FILED
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CLERK

No. 00-1737

IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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CERTIORARI GRANTED OCTOBER 15, 2001

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APPENDIX A — RELEVANT DOCKET ENTRIES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

June 3, 1999	Complaint (referred to Mag. Judge Mark R. Abel).
June 3, 1999	Motion by plaintiff Watchtower Bible, plaintiff Wellsville OH Congregation of Jehovah's Witnesses, Inc. for preliminary injunction.
July 1, 1999	Memorandum by defendant Village of Stratton Ohio, defendant Council of the Village of Stratton, defendant John M. Abdalla in opposition to motion for preliminary injunction.
July 2, 1999	Motion by amicus Ohio Municipal League for leave to file a brief as an amicus curiae.
July 6, 1999	Answer by defendants Village of Stratton Ohio, Council of the Village of Stratton, John M. Abdalla.
July 6, 1999	Motion by defendant Council of the Village of Stratton to dismiss the Complaint as to Council of the Village of Stratton because defendant is not sui juris.
July 9, 1999	Order by Magistrate Judge Mark R. Abel granting motion for leave to file a brief as an amicus curiae.

Appendix A

July 9, 1999	Brief filed by amicus Ohio Municipal League in support of the Village of Stratton.
July 21, 1999	Reply by plaintiff Watchtower Bible, plaintiff Wellsville OH Congregation of Jehovah's Witnesses to response to motion for preliminary injunction.
July 27, 1999	Order by Judge Edmund A. Sargus Jr. denying the motion to dismiss the Complaint as to Council of the Village of Stratton because defendant is not sui juris as moot. Dismissing party Council of the Village of Stratton.
July 27, 1999	Civil Minutes: Preliminary Injunction Hearing held in St. Clairsville before Judge Edmund A. Sargus Jr. For Plaintiffs – Susan B. Gellman, Esq., Paul D. Polidoro, Esq., Richard D. Moake, Esq. For defendants Abraham Cantor, Esq., Diane Richards Brey, Esq., Frank Bruzzese, Esq. (Rep), John Abdalla, Mayor (Rep). Court Reporter – Laura Samuels. Law Clerk/Acting Courtroom Deputy – Jennifer Henderson, Esq.
July 30, 1999	Memorandum by defendants regarding Plaintiff Watchtower Bible and Tract Society of New York, Inc.'s capacity to sue.
Aug. 5, 1999	Response Memorandum by plaintiff Watchtower Bible on the issue of capacity to sue.

Appendix A

Aug. 6, 1999	Order by Judge Edmund A. Sargus Jr. granting in part and denying in part motion for preliminary injunction.
Aug. 12, 1999	Withdrawal by defendant Village of Stratton, Ohio, defendant John M. Abdalla of defenses regarding capacity to sue.
Aug. 16, 1999	Transcript of Preliminary Injunction hearing held before Judge Sargus on 7/27/99 in St. Clairsville.
Aug. 18, 1999	Order by Judge Edmund A. Sargus Jr. granting in part and denying in part plaintiff's motion for preliminary injunction pursuant to the Court's 8/6/99 Memorandum and Order dismissing case.
Aug. 18, 1999	Judgement: dismissing case pursuant to the Court's 8/18/99 Order and 8/6/99 Memorandum and Order granting in part and denying in part plaintiff's motion for preliminary and permanent injunction.
Sept. 3, 1999	Notice of Appeal by plaintiff Watchtower Bible, plaintiff Wellsville OH Congregation of Jehovah's Witnesses from District Court decision of 8/18/99.
Sept. 7, 1999	Appeal Notification issued CA.
July 28, 2000	Record certified to USCA 6th.

Appendix A

Mar. 15, 2001	Order of USCA 6th: dismissing the appeal.
Mar. 16, 2001	Appeal record returned from USCA 6th.
May 31, 2001	Letter to court for the U.S. Supreme Court placing the petition for a writ of certiorari on the 5/21/01 docket.
Oct. 23, 2001	Order of the U.S. Supreme Court: granting writ of certiorari.
Oct. 24, 2001	Record certified to the U.S. Supreme Court: 1 volume and 1 transcript sent via UPS.

APPENDIX B — RELEVANT DOCKET ENTRIES OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Sept. 9, 1999	Civil Case Docketed. Notice filed by Appellant Watchtower Bible, Appellant Wellsville.
Nov. 29, 1999	Pre-Argument Conference work complete.
Nov. 30, 1999	Proof Brief filed by Paul D. Polidoro for Appellant Wellsville, Susan B. Gellman for Appellant Wellsville, Appellant Watchtower Bible, Richard D. Moake for Appellant Watchtower Bible. Certificate of service date 11/29/99.
Nov. 30, 1999	Request to require oral argument filed by Paul D. Polidoro for Appellant Wellsville, Richard D. Moake for Appellant Watchtower Bible.
Dec. 28, 1999	Appearance filed by Attorney Barry M. Byron for Ohio Municipal League, Ohio Municipal League.
Dec. 28, 1999	Motion filed to allow Ohio Municipal League to file an amicus brief. Motion filed by Barry M. Byron for Ohio Municipal League, Ohio Municipal League.
Dec. 28, 1999	Amicus Brief tendered. Received from Barry M. Byron for OH Municipal League, Ohio Municipal League.

Appendix B

Dec. 28, 1999	Brief filed by Barry M. Byron for Amicus Curiae Ohio Municipal League, Amicus Curiae Ohio Municipal League. Certificate of service date 12/27/99.
Jan. 11, 2000	Request to require oral argument filed by Abraham Cantor for Appellee John M. Abdalla, Appellee Council of Stratton, Appellee Village of Stratton.
Jan. 12, 2000	Proof Brief filed by Abraham Cantor for Appellee John M. Abdalla, Appellee Council of Stratton, Appellee Village of Stratton. Certificate of service date 1/11/00.
Feb. 10, 2000	Proof Reply Brief filed by Paul D. Polidoro, Susan B. Gellman, and Richard D. Moake for Appellant Watchtower Bible. Certificate of service date 2/9/00.
Feb. 16, 2000	Appendix filed by Paul D. Polidoro for Appellant. Certificate of service date 2/15/00.
Feb. 22, 2000	Final Brief filed by Abraham Cantor for Appellee John M. Abdalla, Appellee Council of Stratton, Appellee Village of Stratton. Certificate of service date 2/18/00.
Mar. 7, 2000	Final Brief filed by Paul D. Polidoro for Appellant Wellsville, Susan B. Gellman for Appellant Wellsville, Appellant Watchtower Bible, Richard D. Moake for Appellant Watchtower Bible. Certificate of service date 3/6/00.

Appendix B

	Bible, Richard D. Moake for Appellant Watchtower Bible. Certificate of service date 3/6/00.
Mar. 7, 2000	Final Reply Brief filed by Paul D. Polidoro for Appellant Wellsville, Susan B. Gellman for Appellant Wellsville, Appellant Watchtower Bible, Richard D. Moake for Appellant Watchtower Bible. Certificate of service date 3/6/00.
July 20, 2000	Record requested from District Court.
July 26, 2000	Ruling granting motion to allow amicus (Ohio Municipal League) to file a brief filed by Barry M. Byron.
Aug. 1, 2000	Certified Record filed. Volumes include 2 Pl.
Aug. 7, 2000	Additional Citation filed by Paul D. Polidoro for Appellant Wellsville in 99-4087.
Aug. 25, 2000	Additional Citation filed by Paul D. Polidoro for Appellant Wellsville in 99-4087, Paul D. Polidoro for Appellee Wellsville in 00-3325.
Aug. 29, 2000	Additional Citation filed by Abraham Cantor for Appellee John M. Abdalla, Appellee Council of Stratton, Appellee Village of Stratton in 99-4087.

Appendix B

Sept. 21, 2000	Cause argued on 9/21/00 by Paul D. Polidoro for Appellant Wellsville in 99-4087, Abraham Cantor for Appellee John M. Abdalla, Appellee Council of Stratton, Appellee Village of Stratton in 99-4087, Paul D. Polidoro for Appellee Wellsville in 00-3325, Abraham Cantor for Appellant John M. Abdalla, Appellant Village of Stratton in 00-3325 before Judges Merritt, Kennedy, Gilman.
Feb. 20, 2001	Opinion filed: Affirmed; decision for publication pursuant to local rule 206. Gilbert S. Merritt, Circuit Judge, Cornelia G. Kennedy, Authoring Judge, Ronald L. Gilman, Circuit Judge (delivered a separate opinion, concurring in part and dissenting in part).
Feb. 20, 2001	Judgment: Affirmed.
Mar. 14, 2001	Mandate issued with no cost taxed.
Mar. 14, 2001	Certified Record returned to lower court at the end of appellate proceedings. Volumes included: 2 Pl.
Mar. 22, 2001	Record acknowledgement received from the district court. Acknowledged by: Scott Miller. Acknowledgement date: 03/16/01.

Appendix B

May 29, 2001	U.S. Supreme Court notice filed regarding petition for writ of certiorari filed by Appellant Watchtower Bible. Filed in the Supreme Court on 5/21/01, Supreme Ct. case number: 00-1737.
Oct. 22, 2001	U.S. Supreme Court letter filed granting petition for writ of certiorari – limited to question two presented by the petition filed by Watchtower Bible. Filed in the Supreme Court on 10/15/01.

APPENDIX C — COMPLAINT WITH EXHIBIT A: ORDINANCE NO. 1998-5 AND CIVIL COVER SHEET DATED AND FILED JUNE 3, 1999

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Case No. C2-99 526

JUDGE SARGUS
MAGISTRATE JUDGE ABEL

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
25 Columbia Heights
Brooklyn, New York, 11201-1300; and

THE WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.
472 14th Street
Wellsville, Ohio 43968-1308,

Plaintiffs,

vs.

THE VILLAGE OF STRATTON, OHIO,

COUNCIL OF THE VILLAGE OF STRATTON, OHIO,

and

Appendix C

JOHN M. ABDALLA, MAYOR OF THE VILLAGE OF STRATTON, OHIO, in his official capacity

all care of:
Village of Stratton Municipal Building
136 Third Avenue, Stratton, Ohio 43961,

Defendants.

COMPLAINT

1. The Plaintiffs, Watchtower Bible and Tract Society of New York, Inc., and the Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc., bring this action for declaratory and injunctive relief against the Village of Stratton, Ohio; the Village Council; and the Mayor of the Village, in his official capacity, to seek declaratory and injunctive relief to remedy deprivations of their rights to freedom of religion, freedom of speech, freedom of the press, and due process of law through the enactment and implementation of a legislative scheme that interferes with and chills the exercise of those rights. Chapter 116, Sections 116.01 through 116.06, inclusive, and Section 116.99, of the Codified Ordinances of the Village of Stratton ("the Ordinances," attached as Exhibit A). This legislative scheme places unconstitutionally unreasonable restrictions upon the Plaintiffs' exercise of their rights to free exercise of religion, freedom of speech, and freedom of the press, and it was designed to do so. Each paragraph of the complaint incorporates the others without restatement.

Appendix C

JURISDICTION AND VENUE

2. This action arises under the First and Fourteenth Amendments to the United States Constitution; Sections 7, 11, and 16 of Article I of the Ohio Constitution; and 42 U.S.C. §§ 1983 and 1985.

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202.

4. This Court is authorized to grant the Plaintiffs' prayer for relief and to award costs, including reasonable attorneys' fees, under 42 U.S.C. § 1988.

5. This Court is authorized to grant declaratory judgment under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, implemented through Rule 57 of the Federal Rules of Civil Procedure, and to issue the preliminary and permanent injunctions requested by the Plaintiffs pursuant to Rule 65 of the Federal Rules of Civil Procedure.

6. Venue is proper under 28 U.S.C. § 1391(b) and Local Rule 3.3, as all of the Defendants are found within Jefferson County, Ohio, and the Defendants' acts alleged herein occurred in the County of Jefferson, Ohio.

PARTIES

7. Watchtower Bible and Tract Society of New York, Inc. ("Watchtower") is a non-stock corporation duly organized and existing under the laws of the State of

Appendix C

New York. Its principal place of business is 25 Columbia Heights, Brooklyn, New York. Watchtower is a tax exempt organization under the United States Internal Revenue Code.

8. The Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. is a non-stock corporation duly organized and existing under the laws of the State of Ohio. Its principal place of business is 472 14th Street, Wellsville, Ohio. All members of the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc., are Jehovah's Witnesses by religion, and the reason for the formation of the corporation was and is to practice the religion of Jehovah's Witnesses under the auspices of Watchtower. (The corporation and its individual members are referred to collectively herein as "the Wellsville Congregation.")

9. The Village of Stratton, Ohio ("the Village") is a public body corporate and politic established, organized, and authorized pursuant to the laws of the State of Ohio, having the authority to sue and be sued. Its principal place of business is in Jefferson County, Ohio.

10. John M. Abdalla ("the Mayor") is the mayor of the Village, a duly elected public official. His principal place of business is in Jefferson County, Ohio. Upon information and belief, the Mayor resides in the Village.

11. The Council of the Village of Stratton ("the Council") is an elected public body of members. Its principal place of business is in Jefferson County, Ohio.

12. At all times relevant hereto, the Defendants were acting within the course and scope of their respective authority and under color of state law.

STATEMENT OF FACTS

13. Jehovah's Witnesses believe that they have a Bible-based duty to tell other people about the contents of the Bible and its importance to people today. They do this by talking to people at their homes and businesses, on the public streets, at public places, and elsewhere that people are willing to discuss such topics. One of the primary methods used by Jehovah's Witnesses to talk with people is by going from door to door in residential and business neighborhoods, and by meeting people on public streets and in public buildings. Jehovah's Witnesses' beliefs in this regard are based upon biblical verses including Matthew 24:14; Matthew 28:19-20; Acts 5:42; Acts 20:20; Acts 20:27; and 2 Timothy 4:1-2.

14. Watchtower is the corporation utilized by the Governing Body of Jehovah's Witnesses to coordinate the preaching activity in the United States. Among its activities is the dissemination of what Jehovah's Witnesses believe to be Bible truths, in various languages, by means of the publication of Bibles, tracts, pamphlets, papers, and other religious documents.

15. Watchtower is and has been since 1909 the publisher of numerous Bibles, tracts, magazines, booklets, and books, including the bi-weekly magazines *The Watchtower* and *Awake!*, all of which are distributed

throughout the continental United States and elsewhere. The primary means by which Watchtower distributes these publications is through congregations of Jehovah's Witnesses, whose members personally distribute them to individuals, primarily through personal contact.

16. The Wellsville Congregation consists of approximately 59 members and is the congregation of Jehovah's Witnesses that would coordinate and conduct the ministry activity in the Village. In doing so, its members distribute Watchtower's publications and talk to people about the Bible in the manner described above.

17. Jehovah's Witnesses, including the Wellsville Congregation, have a reputation both in the United States and in over 230 countries worldwide as being well-dressed and well-groomed; of being peaceful, law-abiding citizens; and of conducting public ministry.

18. As part of their ministry, Jehovah's Witnesses, including the Wellsville Congregation, offer home Bible studies without cost to anyone who is interested and offer religious literature without cost to anyone who shows genuine interest in reading it. All preaching and teaching done by Jehovah's Witnesses is done on a volunteer basis and without charge. The basis for Jehovah's Witnesses' doing this work is the Scriptural commission that "without cost I gladly declared the good news of God to you," as stated by the Apostle Paul at 2 Corinthians 11:7 (*New World Translation of the Holy Scriptures*).

19. Neither Watchtower nor the Wellsville Congregation advertises, promotes, sells, or explains any product,

service, organization, or cause, or solicits orders for the sale of goods, wares, merchandise, or services in the Village.

20. In attempting to conduct their public ministry activity in the Village, members of the Wellsville Congregation have been confronted by both the Village's police officers and the Mayor, who told them (1) that they had to stop their public ministry and "get out of town" or they would be arrested, and (2) "You know you are not to be here — if you were not women, you would be arrested on the spot."

21. The Village amended the relevant sections of the Codified Ordinances of the Village of Stratton in 1998, following inquiry from the Plaintiffs. The Act enacting the Ordinances is Ordinance No. 1998-5, "Ordinance Regulating Uninvited Peddling and Solicitation upon private property in the Village of Stratton, Ohio, and Amending Ordinance No. 1996-06 of the Ordinances of the Village of Stratton, Ohio." It is set forth in its entirety in Exhibit A.

22. Section 116.01, "Uninvited Peddling and Soliciting Declared a Nuisance," provides:

> The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants

> of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

23. Section 116.02, "Enforcement," provides:

> The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

24. Section 116.03, "Registration Required — Prohibition of Unregistered Solicitation, Etc.," provides:

> (a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.
>
> (b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's

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Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then [sic] contain the following information:

(1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with the credentials from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and,

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(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

25. Section 116.04, "Issuance of Permit; Fee, Content, and Display," provides:

Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit. The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrants' Solicitor's Registration Form.

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

26. Section 116.05, "Time Limitations," provides:

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor

continue after 5:00 p.m. This time limitation shall be stated on the permit.

27. Section 116.06, "Denial or Revocation of Permit," provides in part:

> Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:
>
> (a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.
>
> (b) Fraud or misrepresentation contained in the Solicitor's Registration Form.
>
> (c) Fraud, misrepresentation or false statements made in the course of conducting the activity.
>
> (d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.
>
> (e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

> (f) The permittee ceases to possess the qualifications required in this chapter for the original registration.
>
> The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with the law.

28. Section 116.07, "Owner's/Occupant's Prohibition Against Entry," provides a method by which owners or occupants of private property may prohibit the uninvited entry of even those persons who have complied with the Ordinances by registering the property with the Village and posting a "No Solicitation" sign in a location reasonably visible to persons intending to enter the property.

29. Section 116.99, "Penalty," states that violation of Sections 116.01, 116.03, and 116.07 is a misdemeanor of the fourth degree.

30. Section 2 of Ordinance 1998-5 states:

> This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above

Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

Section 3 of Ordinance 1998-5 states, "This Ordinance shall be in full force and effect immediately upon its passage."

31. The Ordinances were promulgated and are enforced by the Defendants under color of law and constitute the policy and custom of the Defendants.

32. The current policy of the Village is that the Ordinances apply to the Plaintiffs, who must obtain permits in order to conduct public ministry in the Village. This policy is reflected in letters sent between February 11, 1998 and September 9, 1998 to Watchtower by the Village's attorney, Frank J. Bruzzese, and by the Mayor. The Wellsville Congregation and Watchtower asked the Village to change its position regarding application of the Ordinances to the Plaintiffs, in letters from Watchtower's counsel to the Defendants between December 11, 1997 and August 21, 1998, but the Defendants have refused to do so. The referenced letters are attached as Exhibits B through K.

33. There is a genuine threat that the Wellsville Congregation will be prosecuted if they exercise their

constitutional rights by engaging in their public ministry in the Village.

34. The Plaintiffs' religious activities pose no material threat or impediment to the peace, safety, and welfare of the people and property of the Village.

COUNT ONE

THE ORDINANCES ARE FACIALLY UNCONSTITUTIONAL BECAUSE THEY UNREASONABLY INFRINGE UPON FREE EXERCISE OF RELIGION, IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 7 OF ARTICLE I OF THE OHIO CONSTITUTION

35. The Ordinances are susceptible to application to constitutionally protected religious activity by individuals and religious organizations.

36. The Ordinances impose a prior restraint and unreasonable conditions, requirements, and restrictions upon the free exercise of religion.

37. The Ordinances constitute an improper scheme of censorship of religious ideas and expression.

38. The Ordinances chill constitutionally protected religious belief and practice.

39. The Ordinances grant unreasonable discretion to government officials.

40. The Ordinances are not narrowly tailored to serve a compelling state interest.

41. There is no adequate remedy at law to compensate persons affected by this ordinance for the infringement of their rights to the free exercise of religion.

COUNT TWO

THE ORDINANCES ARE FACIALLY UNCONSTITUTIONAL BECAUSE THEY UNREASONABLY INFRINGE UPON THE FREEDOM OF SPEECH, IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 11 OF ARTICLE I OF THE OHIO CONSTITUTION

42. The Ordinances improperly subject the exercise of free speech to prior restraint by Village officials and place unreasonable conditions, requirements, and restrictions upon the freedom of speech, in violation of the First and Fourteenth Amendments to the United States Constitution and Section 11 of Article I of the Ohio Constitution.

43. The Ordinances constitute an improper scheme of censorship of expression.

44. The Ordinances chill constitutionally protected expression.

45. The Ordinances grant unreasonable discretion to government officials.

46. There is no adequate remedy at law to compensate persons affected by this ordinance for the infringement of their rights to freedom of speech.

47. The Ordinances are not narrowly tailored to serve a compelling state interest.

48. The Ordinances are overbroad in that even if they do reach some conduct that may constitutionally be subjected to their restrictions, they are applicable to speech and conduct that is protected by the state and federal Constitutions.

COUNT THREE

THE ORDINANCES ARE FACIALLY UNCONSTITUTIONAL BECAUSE THEY UNREASONABLY INFRINGE UPON THE FREEDOM OF THE PRESS, IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 11, ARTICLE I OF THE OHIO CONSTITUTION

49. The Ordinances infringe upon the freedom of the press because they subject the exercise of publication and distribution of written materials to improper prior restraint by Village officials and place unreasonable conditions, requirements, and restrictions, including the requirement of a permit, upon the publication and distribution of written materials.

50. The Ordinances constitute an improper scheme of censorship of written materials.

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51. The Ordinances chill constitutionally protected publication and distribution of written materials.

52. The Ordinances grant unreasonable discretion to government officials.

53. There is no adequate remedy at law to compensate persons affected by this ordinance for the infringement of their rights to publish and distribute written materials.

54. The Ordinances are not narrowly tailored to serve a compelling state interest.

COUNT FOUR

THE ORDINANCES ARE FACIALLY UNCONSTITUTIONAL BECAUSE THEY ARE FATALLY VAGUE, IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND SECTION 16 OF ARTICLE I OF THE OHIO CONSTITUTION

55. The Ordinances do not give constitutionally adequate notice either of the persons or groups to whom they apply or of the conduct that is prohibited, in violation of the guarantees of due process of law of the Fourteenth Amendment to the United States Constitution and Section 16 of Article I of the Ohio Constitution. Terms including but not limited to "canvassers," "solicitors," "hawkers," "promoting," and "cause," in Section 116.01, are susceptible of several meanings, some of which would implicate constitutionally protected activity.

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56. The vagueness of the Ordinances grants unreasonable discretion to government officials and invites arbitrary and discriminatory enforcement.

COUNT FIVE

THE ORDINANCES, AS APPLIED TO THE PLAINTIFFS, UNREASONABLY INFRINGE UPON THEIR FREEDOM OF RELIGION, IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 7, ARTICLE I OF THE OHIO CONSTITUTION

57. The Plaintiffs' religious activities described in paragraphs 13-19 are an exercise of their right to freedom of religion protected by the First and Fourteenth Amendments to the United States Constitution and Section 7, Article I of the Ohio Constitution.

58. In engaging in these activities, the Plaintiffs are not "canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services," nor do they do anything "for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services."

59. The Defendants' application of the Ordinances to the Plaintiffs to declare their religious practice a "nuisance" and to regulate and limit their religious practice as set

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forth in the Ordinances violates the Plaintiffs' right to the free exercise of religion under the federal and state Constitutions, because the Ordinances impose a prior restraint and unreasonable conditions, requirements, and restrictions upon the free exercise of religion.

60. The Defendants' expressed intention to apply the Ordinances to the Plaintiffs' religious activities chills their exercise of their federal and state constitutional rights to freedom of religion.

61. Application of the Ordinances to the Plaintiffs' religious practices is not narrowly tailored to serve any compelling state interest.

62. The loss of their First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury to the Plaintiffs.

63. The Plaintiffs have no adequate remedies at law.

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COUNT SIX

THE ORDINANCES, AS APPLIED TO THE PLAINTIFFS, UNREASONABLY INFRINGE UPON THEIR FREEDOM OF SPEECH, IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 11, ARTICLE I OF THE OHIO CONSTITUTION

64. The Plaintiffs' activities described in paragraphs 13-19 are an exercise of their right to freedom of speech, protected by the First and Fourteenth Amendments to the United States Constitution and Section 11, Article I of the Ohio Constitution.

65. The Defendants' application of the Ordinances to the Plaintiffs to declare their religious practice a "nuisance" and to regulate and limit their religious practice as set forth in the Ordinances violates the Plaintiffs' right to freedom of speech under the federal and state Constitutions, because the Ordinances impose a prior restraint and unreasonable conditions, requirements, and restrictions upon free speech.

66. The Defendants' expressed intention to apply the Ordinances to the Plaintiffs' activities chills their exercise of their federal and state constitutional rights to freedom of speech.

67. Application of the Ordinances to the Plaintiffs' activities is not narrowly tailored to serve any compelling state interest.

68. The loss of their First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury to the Plaintiffs.

69. The Plaintiffs have no adequate remedies at law.

COUNT SEVEN

THE ORDINANCES, AS APPLIED TO THE PLAINTIFFS, UNREASONABLY INFRINGE UPON THEIR RIGHTS TO FREEDOM OF THE PRESS, IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND SECTION 11, ARTICLE I OF THE OHIO CONSTITUTION

70. The Plaintiffs' activities described in paragraphs 14-16 and 18 are an exercise of their right to freedom of press, protected by the First and Fourteenth Amendments to the United States Constitution and Section 11, Article I of the Ohio Constitution.

71. The Defendants' expressed intention to apply the Ordinances to the Plaintiffs' activities chills their exercise of their federal and state constitutional rights to freedom of the press.

72. Application of the Ordinances to the Plaintiffs' activities is not narrowly tailored to serve any compelling state interest.

73. The loss of their First Amendment freedoms, for even minimal periods of time, constitutes irreparable injury to the Plaintiffs.

74. The Plaintiffs have no adequate remedies at law.

COUNT EIGHT

THE DEFENDANTS' APPLICATION OF THE ORDINANCES TO THE PLAINTIFFS IS A DEPRIVATION OF THE PLAINTIFFS' CIVIL RIGHTS, IN VIOLATION OF 42 U.S.C. § 1983

75. In applying the Ordinances to the Plaintiffs, the Defendants have deprived and continue to deprive the Plaintiffs of their federal constitutional rights to free exercise of religion, free speech, freedom of the press, and due process of law, all under the First and Fourteenth Amendments to the United States Constitution.

76. The Defendants' application of the Ordinances to the Plaintiffs was and is undertaken under color of state law.

WHEREFORE, the Plaintiffs respectfully request that this Court grant the following relief:

1. Declare the Ordinances to be facially unconstitutional;

2. Declare the Ordinances to be unconstitutional as applied to the Plaintiffs' activities described herein;

3. Preliminarily and permanently enjoin the Defendants, their successors, officers, agents, employees, and all other persons in active concert with them from enforcing, attempting to enforce, or threatening to enforce the Ordinances in any manner that interferes with the Plaintiffs' exercise of their constitutionally protected rights;

4. Adjudge, decree, and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that these declarations shall have the force and effect of final judgment;

5. Provide for the Court to retain jurisdiction of this matter for the purpose of enforcing this Court's order;

6. Award the Plaintiffs the reasonable costs and expenses of this action, including attorneys' fees, in accordance with 42 U.S.C. § 1988; and

7. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

s/ Susan B. Gellman
Susan B. Gellman (0034375)
Trial Attorney
Benson A. Wolman (0040123)
Nelson E Genshaft (0011023)
Wolman, Genshaft & Gellman
341 South Third Street, Suite 301
Columbus, Ohio 43215-5463
Telephone: (614) 280-1000
Facsimile: (614) 280-9000

Counsel for Plaintiffs Watchtower Bible and Tract Society of New York, Inc., and the Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc.

Richard D. Moake
Associate General Counsel
Watchtower Bible and Tract
Society of New York, Inc.
100 Watchtower Drive
Patterson, NY 12563
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Co-counsel for Plaintiff
Watchtower Bible and Tract
Society of New York, Inc.

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Paul D. Polidoro
2800 Route 22
Patterson, NY 12563
Telephone: (914) 878-7921
Facsimile: (914) 878-2060

Co-counsel for Plaintiff Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing complaint by delivering a copy thereof to Mayor John M. Abdalla, at his office at the Village of Stratton Municipal Building, 136 Third Avenue, Stratton, Ohio 43961, and to Frank Bruzzese, Esq., Village Solicitor, counsel for the Village of Stratton, Ohio and for the Council of the Village of Stratton, at his office at Freifield, Bruzzese, Wehr, Moreland, Straus & Spahn, P.O. Box 1506, Steubenville, Ohio 43952-6506, this 3rd day of June, 1999.

s/ Susan B. Gellman
Susan B. Gellman

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EXHIBIT A

ORDINANCE NO. 1998-5

ORDINANCE REGULATING UNINVITED PEDDLING AND SOLICITATION UPON PRIVATE PROPERTY IN THE VILLAGE OF STRATTON, OHIO, AND AMENDING ORDINANCE NO. 1996-__ OF THE ORDINANCES OF THE VILLAGE OF STRATTON, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that Ordinance No. 1996-06 of the Ordinances of the Village of Stratton, Ohio, which was passed on September, 1996, is hereby amended, by replacing the language of said Ordinance No. 1996-06 in its entirety, with the following language:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that, pursuant to authority granted in Section 715.61 of the Ohio Revised Code, and pursuant to Home Rule powers vested in the Village under Section 3, Article XVIII of the Ohio Constitution, the Codified Ordinances of the Village of Stratton, Ohio are hereby amended by the adoption of the following Chapter and Codified Ordinance Sections.

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CHAPTER 116

Peddlers and Solicitors

116.01 Uninvited peddling and soliciting declared a nuisance.

116.02 Enforcement.

116.03 Solicitor's Registration and Permit — Prohibition of unregistered solicitation, etc.

116.04 Issuance of permit; fee, content and display; effect.

116.05 Time limitations.

116.06 Denial or Revocation of permit.

116.07 Owner/occupant prohibition — "No Solicitation" Registration.

116.98 Penalty.

CROSS REFERENCES

Power to inspect food products — see Ohio R.C. 715.46
Power to regulate — see Ohio R.C. 715.61 et seq.
Home solicitation sales — see Ohio R.C. 1345.21 et seq.
Charitable solicitations — see Ohio R.C. Ch. 1716
Trespassing — see Ohio R.C. 2909.21
Frozen desserts — see Ohio R.C. 3717.51 et seq.
Littering — see Ohio R.C. 3767.20

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116.01 UNINVITED PEDDLING AND SOLICITING DECLARED A NUISANCE.

The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

116.02 ENFORCEMENT.

The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

116.03 REGISTRATION REQUIRED — PROHIBITION OF UNREGISTERED SOLICITATION, ETC.

(a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.

(b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:

(1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and,

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

116.04 ISSUANCE OF PERMIT; FEE, CONTENT AND DISPLAY.

Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit. The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrant's Solicitor's Registration Form.

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

116.05 TIME LIMITATIONS.

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. This time limitation shall be stated on the permit.

116.06 DENIAL OR REVOCATION OF PERMIT.

Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:

(a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.

(b) Fraud or misrepresentation contained in the Solicitor's Registration Form.

(c) Fraud, misrepresentation or false statements made in the course of conducting the activity.

(d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.

(e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

(f) The permittee ceases to possess the qualifications required in this chapter for the original registration.

The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with law.

116.07 OWNER'S/OCCUPANT'S PROHIBITION AGAINST ENTRY.

(a) Notwithstanding the provisions of any other Section of this Chapter 116, any person, firm or corporation who is

the owner or lawful occupant of private property within the territorial limits of the Village of Stratton, Ohio, may prohibit the practice of going in or upon the private property and/or the private residence of such owner or occupant, by uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors, by registering its property in accordance with Subdivision (b) of this Section and by posting upon each such registered property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such property.

(b) The registration authorized by Subsection (a) hereof shall be made by filing a "No Solicitation Registration Form", at the office of the Mayor, on a form furnished for such purpose. The form shall be completed by the property owner or occupant and it shall then contain the following information:

(1) The name and address of the owner or occupant who wishes to prohibit uninvited canvassing, soliciting, peddling, hawking, merchandising and/or transient vending upon the private property of the owner or occupant;

(2) The specific address of each property at which the owner or occupant prohibits such conduct; and,

(3) A written and signed statement which reads:

"I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I,

hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

_____

_____

_____

_____

_____

_____

_____

_____"

(c) No uninvited canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services, shall go in or upon the private property of an owner or occupant of property who has registered and posted such property in accordance with Subsections (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

(d) The holder of a permit issued pursuant to Section 116.04 of this Chapter shall not be exempt from the prohibition contained in Subsection (c) of this Section. The holder of such permit shall not go in or upon any private property which has been registered and posted in accordance with Subsection (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

116.99 PENALTY.

(a) Violation of Section 116.01 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(b) Violation of Section 116.03 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

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(c) Violation of Section 116.07(c) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(d) Violation of Section 116.07(d) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

SECTION 2: This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the Village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

SECTION 3: This Ordinance shall be in full force and effect immediately upon its passage.

_____
MAYOR

ATTEST: s/ Lola Kakascik
CLERK

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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
Watchtower Bible and Tract Society
of New York, Inc. and
The Wellsville, Ohio, Congregation
of Jehovah's Witnesses, Inc.

* * *

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Susan B. Gellman and Benson A. Wolman
Wolman, Genshaft & Gellman
341 S. Third St., Suite 301
Columbus, OH 43215-5463
(614) 280-1000 tel.

(a) DEFENDANTS
The Village of Stratton, Ohio,
Council of the Village of Stratton, Ohio, and
John M. Abdalla, Mayor of the Village of
Stratton, Ohio

* * *

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(c) ATTORNEYS (IF KNOWN)
Frank Bruzzese
Freifield, Bruzzese, Wehr, Moreland,
Straus & Spahn
P.O. Box 1506
Steubenville, OH 43952-6506

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

* * *

☒ 3 Federal Question
(U.S. Government Not a Party)

* * *

V. NATURE OF SUIT *(PLACE AN "X" IN ONE BOX ONLY)*

* * *

CIVIL RIGHTS

* * *

☒ 440 Other Civil Rights

* * *

Appendix C

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

42 U.S.C. §§ 1983 and 1985
U.S. Constitution, Amendments 1 and 14

VII. REQUESTED IN COMPLAINT:

* * *

JURY DEMAND: ☐ YES ☒ NO

* * *

DATE
June 3, 1999

SIGNATURE OF ATTORNEY OF RECORD
s/ Susan Gellman

APPENDIX D — MEMORANDUM ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION DATED AND FILED AUGUST 6, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C2-99-526
Judge Edmund A. Sargus, Jr.
Magistrate Judge Abel

Watchtower Bible and Tract Society of New York, Inc., et al.,

Plaintiffs,

V.

Village of Stratton, Ohio, et al.,

Defendants.

MEMORANDUM ORDER

On June 3, 1999, plaintiffs brought this action for preliminary and permanent injunctive relief seeking to enjoin defendants from enforcing a local Ordinance that allegedly interferes with plaintiffs' exercise of their constitutionally protected rights to freedom of religion, freedom of speech, freedom of the press, and due process of law. Plaintiffs, both religious organizations which include practicing Jehovah's Witnesses, allege that the Ordinance is unconstitutional on its face and as applied because it interferes with their First

Amendment right to go door-to-door in the Village of Stratton as part of their religious belief that they should share the Gospel with others. Defendants assert that the Ordinance is a content neutral, narrowly tailored regulation designed to protect the privacy interests of its citizens.

The parties and counsel convened in St. Clairsville, Ohio on July 27, 1999 for a hearing related to the preliminary and permanent injunction issues before the Court. After hearing a day of testimony and upon full consideration of the parties' briefs, the Court ruled from the Bench on plaintiffs' application for preliminary and permanent injunctive relief. This Order serves to memorialize those rulings.

The Village of Stratton, Ohio is a small town of fewer than 300 residents located along the Ohio River. In 1998, the Village passed an Ordinance that regulated the activities of solicitors and canvassers in the town. Generally, the Ordinance was designed to protect the privacy rights of the Village residents. According to the testimony of Frank Bruzzese, Village of Stratton Solicitor, the Ordinance was constructed to protect the Village residents from "flim flam" con artists who prey on small town populations.

It is without question that the Village of Stratton, through the powers accorded Ohio municipalities under Article XVIII, Section 3 of the Ohio Constitution, has the authority to promulgate local laws concerning public health, safety, and welfare. *Cincinnati N & C Ry. Co. v. Cincinnati*, 71 F.2d 124 (6th Cir. 1934). The valid police powers possessed by the various states and delegated to municipalities are, of course, restricted by the various rights set forth in the Constitution, particularly the First Amendment.

Appendix D

The Village Ordinance at issue is Ordinance No. 1998-5, which includes solicitor registration requirements and regulations. The Court must first determine whether this Ordinance applies to plaintiffs as Jehovah's Witnesses. Section 116.01 is the introductory statement of the Ordinance that prohibits uninvited soliciting within the Village of Stratton.[1] The Court finds that Ordinance No. 1998-5 does apply to plaintiffs because Jehovah's Witnesses are "canvassers" who visit homes in neighborhoods for the purpose of "explaining" their "cause," the Gospel of Jehovah. Therefore, the activities of the Jehovah's Witnesses are encompassed by the provisions of Ordinance No. 1998-5.

By the terms of the Ordinance, if a person or entity seeks to engage in conduct defined in Section 116.01, such party must first obtain a valid permit. Section 116.03 of the

1. Section 116.01 provides as follows:

> The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

See Plaintiffs' Trial Exhibit 1.

Appendix D

Ordinance speaks to the registration requirements for potential Village canvassers.[2] No fee is required to obtain a

2. Section 116.03 of the Ordinance states as follows:

> (a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.
>
> (b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:
>
> (1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;
>
> (2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause and/or the goods or services offered;
>
> (3) The name and address of the employer or affiliated organization, with credentials

(Cont'd)

permit. The Court finds that subsections (1 – 4) of Section 116.03(b) are valid, content neutral governmental regulations designed for the safety and security of the Village residents. Subsections (1 – 4) do not infringe upon plaintiffs' First Amendment rights of speech, religion, or free press. The Court views subsection (5), which requires listing the specific address of each private Village residence a Registrant intends to visit, as an onerous regulation that could potentially violate the exercise of constitutional rights. The burden of this provision, however, is cured by the Village allowing a Registrant to attach to the Registration Form a list of willing Village residents which is provided by the Mayor's office.[3] Failure on the part of the Village to make such lists readily available at no cost may render the Ordinance unconstitutional.

(Cont'd)

from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

3. The Court suggests that the Registrant be informed of this procedure somewhere on the Registration Form.

Subsection (6) requires applicants to provide information concerning the purpose of the canvassing activities "as may be reasonably necessary to accurately describe the nature of the privilege desired."[4] Just as business or political canvassers are required to be identified, Jehovah's Witnesses may also be required to state their business "as may be reasonably necessary to accurately describe the nature of the privilege desired." Ordinance No. 1998-5, Section 116.03(b)(6). While lesser known organizations, particularly those marketing commercial products or soliciting only for contributions, may need to provide additional information, this Court finds that, in order for subsection (6) to meet constitutional scrutiny, the plaintiff need only note on the application that it seeks to canvass as part of the Jehovah's Witness ministry. Based upon this interpretation, the Court finds Section 116.03 of the Ordinance to be constitutional on its face.

The Court notes that several groups were granted permission to solicit within the Village outside the time limits set forth in Section 116.05 of the Ordinance. Specifically, at least six separate solicitors for school fundraisers were permitted to canvas the neighborhoods in Stratton after 5:00 p.m. See Defendants' Trial Exhibits 35 A-F. In the event that other groups, including plaintiffs, are denied a permit for the same number of hours, the Village will subject itself to future claims that the application of the Ordinance is not neutral and is violative of the First Amendment. At this juncture, the Court is not willing to reach such a conclusion,

---

4. As the Court noted during the hearing, the exercise of a constitutional right is not a "privilege" and to that extent the Ordinance mischaracterizes the issue. Such mischaracterization does not, however, by itself render the Ordinance unconstitutional.

in that no such request for a similar permit has been made by either plaintiff.

The Court's greatest concern is the language set forth in Section 116.05 of the Ordinance which relates to time limitations of solicitations. Section 116.05 states that "[n]o activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. . . . ." The Court finds this provision of the Ordinance to be an invalid restriction of a canvasser's right to visit homes during reasonable hours. Section 116.05 unnecessarily chills the plaintiffs' First Amendment right to speech. Both solicitors or solicitees may be unavailable during these hours. In the summer months, these time limits exclude up to four hours of daylight, 5:00 p.m. to 9:00 p.m., during which constitutionally protected activities may occur.

It has long been recognized that any regulation of canvassing or soliciting "must be done, and the restriction . . . applied, in such a manner as not to intrude upon the rights of free speech and free assembly." *Thomas v. Collins*, 323 U.S. 516, 540-41 (1945). It is also beyond dispute that solicitation is a form of speech protected by the First Amendment. *Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640 (1981).

A municipality may lawfully act to protect the peaceful enjoyment of local homes by its citizens. *Wisconsin Action Coalition v. City of Kenosha*, 767 F.2d 1248, 1258 (7th Cir. 1985). At the same time, any such local regulation must be precisely tailored to advance the governmental interest in a manner least restrictive of First Amendment rights.

New Jersey Citizen Action v. Edison Tp., 797 F.2d 1250 (3d Cir. 1986).

A number of circuit courts have invalidated local ordinances purporting to ban solicitation or canvassing during daylight hours. See *Wisconsin Action Coalition, supra*; and *New Jersey Citizen Action, supra*. Recently, in *Ohio Citizen Action v. City of Seven Hills*, 35 F. Supp.2d 575 (N.D. Ohio 1999), the Court invalidated a local ordinance imposing a 5:00 p.m. curfew on canvassing. As noted in *National People's Action v. Village of Wilmette*, 914 F.2d 1008, 1012 (1990), "[e]ven a temporary deprivation of a First Amendment freedom of expression is generally sufficient to prove irreparable harm."

The Court also notes that any citizen may post "no trespassing" signs and prevent entry by canvassers or solicitors. Local governments and police are certainly authorized to prosecute trespassers under appropriate criminal laws. It is, however, for citizens and not government to choose whether private property is to be a forum for the expression of First Amendment rights.

The Court finds that to the extent canvassing is limited to 5:00 p.m. in the evening, Section 116.05 of the Ordinance is unconstitutional on its face. The Court, therefore, **ORDERS** that Section 116.05 of the Ordinance be modified to allow covered activities, including welcome door-to-door solicitation, to occur during reasonable hours of the day. This may be easily accomplished by listing reasonable times on a month to month basis.

As a corollary issue, the Court notes that page three of the Registration Form consists of a listing of specific organizations or causes that a Registrant may check to more specifically identify itself. *See e.g.*, Defendants' Trial Exhibit 34-A. Item No. 6 reads "Jehovah [sic] Witnesses." No other religious group is listed separately or singled out on this list. In fact, item No. 17 of the listing reads, "Persons Affiliated with _____ Church _____." Although the Registration Form is an administrative form designed to facilitate compliance with the Ordinance, its language and its form must be content neutral. The Court finds that item No. 6 unnecessarily isolates the Jehovah's Witnesses as a group and **ORDERS** this item stricken from the Registration Form.

Finally, at the conclusion of the hearing and after completion of the presentation of evidence, defendants argued for the first time that plaintiff Watchtower Bible and Tract Society of New York, Inc. and the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. are not proper parties to this action because both registrations with the Ohio Secretary of State had lapsed.[5] Plaintiff the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. argued that during the time that its registration had lapsed, it was still a *de facto* corporation and still a viable legal entity able to bring suit. *See Antioch Baptist Church of Canton v. Jordan*, 1999 WL 333335 (Ohio App. 5 Dist.) (citing *Hines v. Board of Education of the Cleveland City School District* (1985), 26 Ohio Misc.2d 15, 18, 499 N.E.2d 39, citing *I.J. Goldstein*

5. The Court notes its displeasure with defendants for the untimeliness of this argument. The Court, which has otherwise been impressed with the lawyering in this matter, is dismayed that this issue was not raised earlier in the proceedings.

Company v. Mitchell (1921), 14 Ohio App. 231). Plaintiffs presented testimony from Mr. Virsil Koontz, an elder in the Jehovah's Witness Congregation of Wellsville, who stated that he had no knowledge that the state registration of the local congregation or the national governing body of Watchtower corporation had lapsed at any time and that the congregation has continued to operate as if it was duly licensed.

The Court makes only a preliminary finding at this stage that defendants' motion is not well-taken as to the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. The Court, hereby, **ORDERS** defendants to brief the issue of whether the lapse of a corporate registration with the Secretary of State affects the legal capacity of the corporation. This brief shall be filed no later than July 29, 1999. Plaintiffs shall respond by August 5, 1999 with defendants reply brief due on August 12, 1999.

In sum, plaintiffs' motion for preliminary injunction is **GRANTED IN PART AND DENIED IN PART.** The Court finds that Ordinance No. 1998-5 applies to plaintiffs. The Court further finds Ordinance No. 1998-5, Section 116.05 to be an invalid, unconstitutional infringement upon plaintiffs' First Amendment rights. Finally, the Court reserves final ruling on the issue of whether plaintiff Watchtower Bible and Tract Society of New York, Inc. is a proper party to this action.

IT IS SO ORDERED.

8-6-99
Date

s/ Edmund A. Sargus, Jr.
Edmund A. Sargus, Jr.
United States District Judge

APPENDIX E — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION DATED AND FILED AUGUST 18, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. C2-99-526
Judge Edmund A. Sargus, Jr.
Magistrate Judge Abel

Watchtower Bible and Tract Society of New York, Inc., et al.,

Plaintiffs,

V.

Village of Stratton, Ohio, et al.,

Defendants.

ORDER

Defendants have withdrawn their defenses regarding the capacity to sue by plaintiffs Watchtower Bible and Tract Society of New York, Inc. and Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. The issue of capacity to sue was left open after the Court heard testimony on plaintiffs' motion for preliminary and permanent injunction. With defendants having withdrawn their defense to this issue, the Court now issues a Final Order granting in part and denying in part

plaintiffs' motion for preliminary and permanent injunction (Doc. 3). The Court incorporates by reference its reasoning and rulings from its August 6, 1999 Memorandum and Order.

This case is **DISMISSED.**

IT IS SO ORDERED.

8-18-99
Date

s/ Edmund A. Sargus, Jr.
Edmund A. Sargus, Jr.
United States District Judge

APPENDIX F — JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO DATED AND FILED AUGUST 18, 1999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

Case No: **C2-99-526**
Judge Sargus
Magistrate Judge Abel

Watchtower Bible and Tract Society of New York, Inc., et al.,

Plaintiffs,

v.

Village of Stratton, Ohio, et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

* * *

[X] **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

* * *

Appendix F

IT IS ORDERED AND ADJUDGED that this case is hereby **DISMISSED** pursuant to the Court's August 18, 1999 *Order* and August 6, 1999 *Memorandum and Order* granting in part and denying in part plaintiffs' motion for preliminary and permanent injunction.

August 18, 1999
Date

KENNETH J. MURPHY
Clerk

s/ Michael Carey
(By) Deputy Clerk
Michael Carey

APPENDIX G — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DATED, DECIDED AND FILED FEBRUARY 20, 2001

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 99-4087;
00-3325

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.;
WELLSVILLE, OHIO, CONGREGATION OF
JEHOVAH'S WITNESSES, INC.,

Plaintiffs-Appellants
(99-4087)/Appellees,

v.

VILLAGE OF STRATTON, OHIO; JOHN M. ABDALLA,
Mayor of the Village of Stratton, Ohio,
in His Official Capacity,

Defendants-Appellees/
Appellants (00-3325).

Appeal from the United States District Court
for the Southern District of Ohio at Columbus.
No. 99-00526 — Edmund A. Sargus, Jr., District Judge.

Argued: September 21, 2000

Decided and Filed: February 20, 2001

Appendix G

Before: MERRITT, KENNEDY, and GILMAN,
Circuit Judges.

* * *

KENNEDY, J., delivered the opinion of the court, in which MERRITT, J., joined. GILMAN, J. (pp. 26-30), delivered a separate opinion concurring in part and dissenting in part.

OPINION

KENNEDY, Circuit Judge. This case comes to the court on the consolidated appeals of plaintiffs, Watchtower Bible and Tract Society of New York, Inc. and Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc.; and of defendants, the Village of Stratton, Ohio, and its Mayor, John M. Abdalla. Plaintiffs appeal the district court's judgment denying portions of their First Amendment challenges to the Village's solicitation and canvass ordinance. On appeal they argue that the ordinance is facially unconstitutional because it is overly broad and vague, and, as applied, the ordinance violates their rights to free speech and free exercise of religion. Defendants appeal the district court's judgment awarding plaintiffs attorneys' fees as a prevailing party in the First Amendment litigation. They argue that the court erred in finding that plaintiffs were entitled to attorneys' fees, and in the alternative, if this court determines that plaintiffs were entitled to such fees, the amount the court awarded was unreasonable.

Because the ordinance is neither unconstitutionally overbroad nor vague and it is narrowly tailored to serve

significant government interests, we affirm the district court's judgment finding the majority of the ordinance constitutionally permissible. And because the district court did not abuse its discretion in awarding plaintiffs reasonable attorneys' fees, we affirm that judgment as well.

I. FACTS

This dispute centers on the Village of Stratton's ordinance regulating the soliciting and canvassing of private homes in the Village. By its terms, the ordinance applies to "canvassers, solicitors, peddlers, [or] hawkers" that go on a private residence in the Village for the "purposes of advertising, promoting, selling and/or explaining any product, service, organization or cause." Such individuals must first register with the Office of the Mayor by filling out a Registration Form. The Registration Form requires the individuals to furnish information about their cause, why they are canvassing, which residences they intend to canvass, how long they intend to canvass, and any "other information concerning the Registrant[s] and [their] business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired."[1] Once the individuals have

1. Specifically, the relevant section of the Ordinance reads:

> The Form shall be completed by the Registrant and it shall then contain the following information:
>
> (1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;
>
> (Cont'd)

registered, they "shall be furnished a Solicitation Permit" unless the Mayor determines that they (1) failed to complete the Registration Form, (2) provided fraudulent information on the form, (3) made false or fraudulent statements or misrepresentations while canvassing, (4) violated any other local, state, or federal laws, (5) trespassed while canvassing, or (6) ceased to possess the qualifications required to obtain a Solicitation Permit.[2] No fee is required to obtain a permit. Upon obtaining a permit, the canvassers may canvass any

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> (2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;
>
> (3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;
>
> (4) The length of time for which the privilege to canvass or solicit is desired;
>
> (5) The specific addresses of each private residence at which the Registrant intends to [canvass]; and
>
> (6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

2. For the purposes of this opinion, we will refer to any activity covered by the ordinance as canvassing and those individuals engaging in such activities as canvassers.

private residence in the Village between the hours of 9:00 a.m. and 5:00 p.m., provided the owner of the residence has not filed a No Solicitation Form with the Mayor's Office and has not posted a No Solicitation Sign on his property. Prior to this litigation, a No Solicitation Form contained a list of various organizations next to which the resident could place a checkmark to indicate the organizations the resident wished to be excluded from this general prohibition. While the No Solicitation Form listed several organizations by name, the only religious organization it listed by name was the Church of Jehovah's Witnesses.

If individuals covered by the ordinance fail to comply with these requirements, they could be charged with a misdemeanor of the fourth degree.

Plaintiffs challenged the ordinance in district court seeking a declaratory judgment that the ordinance is unconstitutional on its face and as applied to them and seeking a permanent injunction prohibiting the Village from enforcing the ordinance against them. After conducting a bench trial on the matter, the district court found that the ordinance applied to plaintiffs as they were "canvassers" seeking to explain their "cause." Moving to the constitutionality of the ordinance, the court rejected most of plaintiffs' arguments as without merit. The court did, however, find three provisions of the ordinance and one provision of an administrative form — some of which plaintiffs did not specifically challenge in their complaint — potentially constitutionally troubling, and therefore, took action to address those concerns. First, the court found that the 5:00 p.m. time restraint contained in the ordinance was an

unreasonable restriction on time and ordered the Village to change the time restraint to allow for canvassing during all daylight hours. Second, it found that the section of the No Solicitation Form which singled out Jehovah's Witnesses was unconstitutional and ordered the Village to delete any reference to Jehovah's Witnesses from the No Solicitation Form. Third, it found that in order for the ordinance's "additional information" requirement to be constitutional, Jehovah's Witnesses need only "note on the application that [they] seek[ ] to canvass as part of the Jehovah's Witness." Accordingly, the court construed the provision to require only that. Finally, it found that requiring plaintiffs to list on the Registration Form each residence they intended to visit was "an onerous regulation that could potentially violate the exercise of constitutional rights"; however, this problem was cured by the "Village allowing a Registrant to attach to the Registration Form a list of willing Village residents which is provided by the Mayor's office." It appears from the record that this was a voluntary measure taken by the Village prior to the lawsuit.

Unsatisfied with the scope of this relief, plaintiffs filed a timely notice of appeal from the court's judgment. The notice reads, "Plaintiffs . . . hereby appeal . . . those parts of the [district court's] Order . . . which uphold the constitutionality [—] facially and as applied to the Plaintiffs" — of the ordinance.[3]

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3. Plaintiffs are not appealing the portion of the ordinance the district court found unconstitutional and revised nor do they question the legitimacy of that ruling. Consequently, those questions are not before us. While we would likely have no problems with the court's

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In addition to filing an appeal, plaintiffs, based upon the judgment on the merits, filed a motion for attorneys' fees pursuant to 42 U.S.C. § 1988. The district court determined that plaintiffs were a prevailing party and therefore entitled to attorneys' fees. After reducing the requested award, the court awarded plaintiffs $58,892.41 in attorneys' fees and costs. Defendants filed a timely notice of appeal from that judgment.

The appeals are now consolidated and before us.

II. CONSTITUTIONALITY OF THE ORDINANCE

The First Amendment to the United States Constitution provides, "Congress shall make no law . . . prohibiting the free exercise [of religion]; or abridging the freedom of speech, or of the press." U.S. CONST. amend. I. The Supreme Court has made the First Amendment's prohibitions applicable to the states through the Fourteenth Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). Because state

(Cont'd)
decision to strike the time restriction provision from the ordinance as we believe it is severable under Ohio law, *see Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 202-03 (6th Cir. 1997), we would have a more difficult time with the court's attempt to rewrite that provision, *see Wilson v. National Labor Relations Bd.*, 920 F.2d 1282, 1289 (6th Cir. 1990) (recognizing that "courts cannot judicially redraft statutory language"). We are not concerned with the court's revision of the administrative forms as they are not part of the ordinance. Likewise, we are not concerned by the construction of the "additional information" provision of the ordinance, as courts routinely construe legislation so as to avoid constitutional problems.

action includes municipal ordinances adopted under state authority, *see Lovell v. City of Griffin*, 303 U.S. 444, 450 (1938), the prohibitions extend to ordinances such as the one promulgated by Stratton. And because Stratton's ordinance requires canvassers to register prior to canvassing, it "carries with it (unless properly constrained) the power directly and substantially to affect speech" and must therefore undergo Free Speech Clause analysis. *Riley v. National Fed'n of the Blind*, 487 U.S. 781, 801 (1988). And for similar reasons, it must also undergo Free Exercise Clause analysis.

A. Free Speech Challenges

Plaintiffs contend that the ordinance's requirement that canvassers register prior to canvassing fails the Free Speech Clause analysis both facially and as applied to them. Predictably, much of their argument is dedicated to attempting to convince us that the ordinance is subject to strict scrutiny. And as equally predictable, the Village dedicates a large portion of its brief to arguing that the ordinance is subject to some lower level of scrutiny.

1. Level of Judicial Scrutiny

As an initial matter, we note that the Supreme Court has not set forth a framework for determining what level of scrutiny to apply to laws that require an individual to obtain a permit prior to going door-to-door. It has, however, established a framework for answering the question in the context of laws requiring an individual to obtain a permit prior to engaging in speech in a public forum. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992).

We conclude that the analytical framework set forth there applies to this ordinance as well. We reach this conclusion because, in discussing what standard applied to the County's ordinance, the Court characterized its analysis as one of whether the law's restrictions on speech were reasonable in the context of time, place, and manner. As that analysis applies to all laws through which government regulates oral or written expression, *see Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 299 n.8 (1984), and the ordinance regulates oral and written expression, it is subject to the reasonable, time, place, and manner analysis.[4]

Under that framework, a law that is content based is subject to strict scrutiny. *See Turner Broad. Sys., Inc. v. Federal Communications Comm'n*, 512 U.S. 622, 642 (1994). On the other hand, a law that is content neutral and of general applicability is subject to some form of intermediate scrutiny. *See Community for Creative Non-Violence*, 468 U.S. at 293.

Using that framework, the district court determined that the ordinance was content neutral and of general applicability and therefore subject to intermediate scrutiny. Plaintiffs argue that the district court erred and urge us to review the ordinance under strict scrutiny. Strict scrutiny applies, they argue, because the ordinance potentially infringes upon two constitutionally protected rights — freedom of speech and freedom of religion — thereby making their claim a "hybrid

4. The alternative would be to analyze the ordinance under the standard set forth in *United States v. O'Brien*, 391 U.S. 367 (1968), and its progeny. That standard "is little, if any, different from the standard applied to time, place, or manner restrictions." *Community for Creative Non-Violence*, 468 U.S. at 298.

rights" claim. And, they continue, the Supreme Court in *Employment Division v. Smith*, 494 U.S. 872 (1990), established that such claims subject the law in question to strict scrutiny. Hybrid rights claims aside, they argue, strict scrutiny applies because the ordinance discriminates based on the content of the speech. That discrimination is evidenced by the reference to Jehovah's Witnesses in the No Solicitation Form and the Mayor's testimony that he would not furnish Jehovah's Witnesses with an exemption from the time restraints. In either case, they conclude, we must apply strict scrutiny when reviewing the ordinance.

We cannot agree. Our review of the ordinance leads us to conclude it is content neutral and of general applicability, and hence, subject to intermediate scrutiny. A law is content neutral and of general applicability if on its face and in its purpose it does not make a distinction between favored and disfavored speech. *See Turner Broad.*, 512 U.S. at 642-50. On its face, there is no indication that the ordinance distinguishes between favored and disfavored speech; it requires all individuals seeking to canvass to register irrespective of the content of their message. *See Heffron v. International Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 649 (1981). Nor do we find any evidence that the Village's purpose in promulgating the ordinance was to regulate speech based on the message it conveys. Instead, our review indicates that the Village's principal objective in promulgating the ordinance was to prevent fraud and protect the privacy interests of the residents of the Village. *See Ward v. Rock Against Racism*, 491 U.S. 781, 792 (1989).

The evidence plaintiffs cite in support of their argument misses the mark. That the No Solicitation Form listed

Jehovah's Witnesses is not evidence that the Village's purpose in promulgating the ordinance was to restrict their speech; rather, it is evidence of the Village's administration of the ordinance. And that evidence does not indicate that the Village applied the ordinance unequally. It may simply be that Jehovah's Witnesses, along with the other organizations listed on the form, canvassed or solicited more frequently than other groups, thereby making it efficient to place their name on the form. Likewise, the testimony of the Mayor that he would not grant Jehovah's Witnesses an exemption from the ordinance's hours restriction is not evidence of the purpose of the Village in promulgating the ordinance. Nor is it evidence of the Village's application of the ordinance, as plaintiffs have not applied for an exemption. We do note, as the district court did, that were we to find disparate treatment in the granting of exemptions from the time restraints, we would be troubled. However, as our review finds nothing of the sort, we believe the ordinance is neutral on its face and the Village's purpose in promulgating it was content neutral. Therefore, we hold that it is subject to intermediate scrutiny.

In so holding, we reject plaintiffs' assertion that the Supreme Court established in *Employment Division v. Smith* that laws challenged by hybrid rights claims are subject to strict scrutiny. While much debate has revolved around the Court's language in *Smith*, we do not believe the Court held there, nor has it ever held, that a different level of scrutiny applies to laws that potentially affect hybrid rights. In rejecting the plaintiffs' argument that " 'prohibiting the free exercise [of religion]' includes requiring any individual to observe a generally applicable law," the *Smith* Court noted,

> The only decisions in which we have held that the First Amendment bars application of a neutral, generally applicable law to religiously motivated action have involved not the Free Exercise Clause alone, but the Free Exercise Clause in conjunction with other constitutional protections, such as freedom of speech and of the press . . . .

Smith, 494 U.S. at 878, 881. That language was dicta and therefore not binding. Further, as we held in *Kissinger v. Board of Trustees of the Ohio State University*, 5 F.3d 177, 180 (6th Cir. 1993), aside from the fact that the *Smith* Court did not hold that a hybrid rights claim subjects a law to a higher level of scrutiny, the Court did not explain how a hybrid rights claim would alter the level of scrutiny (we note that the one probably had a lot to do with the other). Based in part upon the lack of an explanation from the Court, we declined to alter the standard of scrutiny for laws affecting hybrid rights until the Supreme Court provided guidance. The Court has yet to provide such guidance, and therefore, we adhere to our decision in *Kissinger* and continue to decline to alter the standard of scrutiny. Accordingly, the district court was correct to subject the ordinance to intermediate scrutiny in analyzing the merits of plaintiffs' free speech claims.

2. Merits of Free Speech Claims

It bears emphasis that, contrary to plaintiffs' assertions, Supreme Court dicta is not on their side. On numerous occasions the Court has strongly suggested that registration schemes such as the Village's would pass constitutional muster.

Appendix G

> Nothing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public. . . . Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Cantwell, 310 U.S. at 306; *see also Martin v. City of Struthers*, 319 U.S. 141, 148 & n.14 (1943) (making clear that a city "can by identification devices control the abuse of the privilege by criminals posing as canvassers").[5]

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5. Several of our sister circuits have indicated in dicta that they would reject challenges to the identification portion of solicitation ordinances similar to Stratton's as well. *See, e.g., City of Watseka v. Illinois Public Action Council*, 796 F.2d 1547, 1557 (7th Cir. 1986) ("Watseka's attempt to safeguard its citizens' privacy and protect them from crime is laudable, and the majority of the ordinance's provisions are narrowly tailored to promote Watseka's objectives with only minimal interference with First Amendment rights. Indeed, IPAC is more than willing to comply with Watseka's registration requirements . . . . It is only the 5 p.m. to 9 p.m. complete ban on solicitation that fails to pass constitutional muster . . . ."); *Association of Cmty. Org. for Reform Now v. City of Frontenac*, 714 F.2d 813, 818-19 & n.7 (8th Cir. 1983) ("Frontenac has a legitimate interest in protecting its residents from crime. This objective can be served satisfactorily by enforcement of the city's application and identification for all canvassers, peddlers, and solicitors."). Additionally, the Third Circuit has facially upheld an ordinance requiring canvassers to obtain a license prior to going door-to-door. *See Pennsylvania Alliance for Jobs & Energy v. Council of the Borough of Munhall*, 743 F.2d 182, 188 (3d Cir. 1984).

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We begin our review with a brief discussion of the differences between as applied and facial challenges. "If a statute is unconstitutional as applied, the State may continue to enforce the statute in different circumstances where it is not unconstitutional, but if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances." *Women's Med. Prof'l Corp. v. Voinovich*, 130 F.3d 187, 193 (6th Cir. 1997). Consequently, "a plaintiff's burden in an as-applied challenge is different from that in a facial challenge. In an as-applied challenge, the plaintiff contends that application of the statute in the particular context in which he has acted, or in which he proposes to act, would be unconstitutional." *Id.* Generally, a plaintiff's burden in a facial challenge is higher: the plaintiff must prove that there is no set of circumstances in which the statute's application would be constitutional. *See id.* at 194. That is not the case, however, when the statute regulates speech. Because the remedy for successful facial challenges is broader in scope, we begin our analysis there.

a. Facial Challenges

"In a facial challenge to the overbreadth and vagueness of a law, the court's first task is to determine whether the enactment reaches a substantial amount of constitutionally protected conduct. If it does not, then the overbreadth challenge must fail. The court should then examine the facial vagueness challenge . . . ." *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 (1982). We proceed accordingly.

i. Unconstitutionally Overbroad

Plaintiffs argue the ordinance is unconstitutionally overbroad because it would have the effect of prohibiting individuals from going door-to-door to engage in political speech without first obtaining a permit. An effect, they allege, the Supreme Court effectively made unconstitutional in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), by invalidating an Ohio statute that prohibited the distribution of anonymous campaign literature. Because requiring individuals engaging in political speech to register before going door-to-door would effectively prevent them from remaining anonymous, they conclude, the ordinance is unconstitutional. They are mistaken.

McIntyre's holding misses Stratton's ordinance. The *McIntyre* Court established a First Amendment right to distribute political pamphlets anonymously. *See id.* at 357. We agree that read broadly, the opinion arguably includes in that right the ability to speak to others anonymously. But we do not understand how Stratton's ordinance inhibits this right. As we see it, individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities — their physical identities — to the residents they canvass. In other words, the ordinance does not require canvassers going door-to-door to reveal their identities; instead, the very act of going door-to-door requires the canvassers to reveal a portion of their identities.

While the ordinance requires political canvassers to reveal the remainder of their identities, i.e., their names, we

do not believe that requirement rises to the level of impinging on First Amendment protected speech the Court sought to protect by fashioning the right in *McIntyre*. By creating a right of anonymity, the Court sought "to protect unpopular individuals from retaliation — and their ideas from suppression." *Id.* Once the political canvassers are before the resident, the ability to protect them from those dangers is substantially diminished. Accordingly, there is little reason to read the Court's holding as protecting political canvassers from being required to reveal a portion of their identities when their very activity will reveal other portions of their identity and subject them to scrutiny.[6]

ii. Unconstitutionally Vague

A law is unconstitutionally vague when it does not afford a "person of ordinary intelligence a reasonable opportunity to know what is prohibited," *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972), or when it authorizes or encouragers arbitrary and discriminatory enforcement, *see Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Put more specifically, a statute is vague when the state has "fail[ed] to provide such minimal guidelines" that would prevent "a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections." *Kolender*, 461 U.S. at 358 (quoting *Smith v. Goguen*, 415 U.S. 566, 575 (1974)) (alterations in the original). The ordinance is such a

6. Even if *McIntyre* were implicated, we would find the ordinance constitutional on its face. In reviewing Ohio's statute, the Court applied strict scrutiny. As we have already noted, we are reviewing Stratton's ordinance under intermediate scrutiny. We believe the difference in scrutiny would be outcome determinative.

law, plaintiffs contend, because the meanings of the terms "solicitor," "canvasser," and "cause" are not clear. They offer no explanation for why "solicitor" and "canvasser" are vague; but contend that the Supreme Court has found the term "cause" to be vague.

We find no merit in any of these assertions. Only the last assertion requires any explanation. According to plaintiffs, the Supreme Court's decision in *Hynes v. Mayor & Council of the Borough of Oradell*, 425 U.S. 610 (1976), established that "the word 'cause' is unconstitutionally vague." Specifically, they point to footnote five of the opinion which states, "In the circumstances of this case these allegations are enough to put in issue the precision or lack of precision with which the ordinance defines the *categories* of 'causes' it covers." *Hynes*, 425 U.S. at 621 n.5 (emphasis added). The language plaintiffs quote defeats their argument. As the language indicates, in finding the ordinance vague, the Supreme Court did not criticize the use of the word cause, rather it criticized the ordinance's modification of the word with the phrases "recognized charitable" and "Federal, State, County or Municipal." Specifically, the Court stated that the ordinance "does not explain, for example, whether 'Recognized charitable cause' means one recognized by the Internal Revenue Service as tax exempt, or one recognized by some community agency . . . [and] it is not clear what is meant by a 'Federal, State, County, or Municipal' " cause. *Id.* at 621. Because Stratton's ordinance does not modify the term cause but includes all causes, the holding of and the reasoning in *Hynes* is not applicable.

b. As Applied Challenge[7]

In the context of an as applied challenge, a law requiring registration prior to engaging in speech would pass intermediate scrutiny if it were narrowly tailored to serve a significant government interest and left open ample alternatives for communication. *See Nationalist Movement*, 505 U.S. at 130. If the interest is in redressing past harm or preventing anticipated harms, the government must demonstrate that the harms are real. *See Edenfield v. Fane*, 507 U.S. 761, 770 (1993). An anticipated harm would be considered real if we determined that "there [was] a reasonable ground to fear that serious evil [would] result if free speech [were] practiced" without the regulation. *United States v. National Treasury Employees Union*, 513 U.S. 454, 475 (1995) (internal citations and quotation marks omitted). In making this determination, we pay deference to the predictive judgments of the government. *See Columbia Broad. Sys., Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 103 (1973). A law would be considered narrowly tailored to promote the governmental interests if the interest "would be achieved less effectively absent the regulation," *Ward*, 491 U.S. at 799, and the regulation does not "burden substantially

7. Although the Village has not brought an enforcement action against plaintiffs, we believe plaintiffs have standing to proceed on their as applied challenge. *See Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289 (1979). Because plaintiffs have "alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder," they are not "required to await and undergo criminal prosecution as the sole means of seeking relief." *Id.* at 298 (internal citations and quotation marks omitted).

more speech than is necessary" in furthering the interest, id. And finally, while it is unclear exactly what constitutes ample alternatives for communication, it is clear that this standard does not mean the least restrictive means of promoting the interest in question. *See id.* at 797-98.[8]

As applied to them, plaintiffs argue, the ordinance's registration scheme does not meet these standards because it does not promote a significant government interest and is not narrowly tailored to promote the interests that the Village alleges are significant. Specifically, they argue that the Village has no significant interest to promote because (1) its interest in protecting its residents from annoyance in their homes simply is not a significant governmental interest and (2) while a government's interest in preventing fraud is significant, the Village has not shown that there is a real threat of fraud to its residents. The ordinance is not narrowly tailored, they maintain, because it does not leave open ample alternative channels of communication. Given these flaws, they conclude, we must prohibit the Village from enforcing the ordinance against them.

We disagree. There can be little doubt that the governmental interests the Village seeks to promote —

8. The Supreme Court made this clear in *Ward* where it said, "This less restrictive-alternative analysis . . . has never been a part of the inquiry into the validity of a time, place, and manner regulation. . . . Instead, our cases quite clearly hold that restrictions on time, place, or manner of protected speech are not invalid simply because there is some imaginable alternative that might be less burdensome on speech." *Ward*, 491 U.S. at 797 (internal citations and quotation marks omitted).

protecting its residents from fraud and undue annoyance in their homes — are sufficiently significant. *See Ward*, 491 U.S. at 796; *Hynes*, 425 U.S. at 616-17.[9] And, the harm the

9. Contrary to Watchtower's assertions at oral argument, the Court in *Martin v. City of Struthers* did not hold that a government's interest in protecting its residents from undue annoyance in their homes is insufficient to uphold an ordinance such a Stratton's. At best, the Court said that such an interest is insufficient to uphold an ordinance flatly prohibiting door-to-door canvassing. *See Martin*, 319 U.S. at 144. Further, Watchtower's argument demonstrates a misunderstanding of how the ordinance serves the Village's interest in protecting its residents from undue annoyances. The interest primarily supports the portion of the ordinance prohibiting canvassers from going to the doors of residents who have indicated they wish to be left alone. It does so by (1) attaching a criminal penalty to canvassers who ignore those wishes and (2) requiring identification from the canvasser prior to canvassing so that if he does ignore the wishes of the residents, the Village has information that will assist it in prosecuting the canvasser, thereby adding to the likelihood that a canvasser will be deterred from canvassing such residents. Nothing the Supreme Court has said suggests that this is not a sufficient interest to support a municipality promulgating a content-neutral ordinance such as Stratton's. In fact, the Court's opinions seem to suggest the opposite.

> The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free society. . . . Our prior decisions have often remarked on the unique nature of the home, the last citadel of the tired, the weary, and the sick, . . . and have recognized that preserving the sanctity of the home, the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits, is surely an important value.

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Village seeks to prevent — criminals posing as canvassers in order to defraud its residents — is a real threat. While the evidence of this reality is by no means overwhelming, we believe it is sufficient. That evidence consists of the testimony of Helen MacMurray, Ohio Assistant Attorney General; the Village's Mayor; and Frank Bruzzese, the Village's Solicitor. In her testimony, Ms. MacMurray stated that Ohio has had difficulty with several groups that perpetrate frauds by going door-to-door posing as solicitors or canvassers. And the testimony of the Village's Mayor and its Solicitor indicate that the Village was aware of problems in other Ohio cities with door-to-door fraud when it passed the ordinance. Plaintiffs argue the fact that Ohio has had problems with

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> One important aspect of residential privacy is protection of the unwilling listener. Although in many locations, we expect individuals simply to avoid speech they do not want to hear . . . , the home is different. That we are captives outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere. . . . Thus, we have repeatedly held that individual's are not required to welcome unwanted speech into their homes and that the government may protect this freedom.

Frisby v. Schultz, 487 U.S. 474, 484 (1988) (internal citations and quotation marks omitted); *see also Hynes*, 425 U.S. at 616-17. Several of our sister circuits have also held that the state's interest in protecting its citizens from undue annoyance is sufficient to support statutes facing intermediate scrutiny. *See, e.g.*, *Van Bergen v. Minnesota*, 59 F.3d 1541, 1554 (8th Cir. 1995) (finding that Minnesota's interest in protecting its citizens from unwanted annoyances was a sufficient interest to regulate automated telephone calls); *Pennsylvania Alliance for Jobs & Energy*, 743 F.2d at 187.

such fraud is insufficient to establish a real anticipated harm; they would instead require that Stratton itself have had problems with fraud before it could promulgate an ordinance to prevent fraud. That argument ignores the fact that the interest the ordinance promotes is preventing an anticipated harm. If we required the Village to wait until it had trouble with door-to-door fraud, we would be depriving it of a police power the Supreme Court has made clear municipalities possess. It also ignores the principle reaffirmed by the Supreme Court's holding in *City of Erie v. Pap's A.M.*, 529 U.S. 277, 298 (2000), that a city may use evidence from the experiences of other cities that are similarly situated to establish a reasonable ground to believe that an anticipated harm is real. *See also City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-53 (1986). As municipalities may take the experiences of other municipalities into account, we pay deference to the Village's predictive judgment and the district court's finding in substance that "there [was] a reasonable ground to fear that serious evil [would] result if free speech [were] practiced" without the ordinance. *National Treasury Employees Union*, 513 U.S. at 475. Accordingly, the Village was entitled to promulgate an ordinance that was narrowly tailored to promote its interests in preventing fraud and in protecting its residents from unwanted annoyance.

And from our review of the record, we believe that is what the Village did. The ordinance promotes the Village's interest in protecting the privacy of its residents by creating additional deterrents for canvassers, including Jehovah's Witnesses, who are considering ignoring a resident's wishes and canvassing the resident's home. A Jehovah's Witness is more likely to respect the resident's wishes not to be

canvassed when a criminal penalty — albeit a light penalty — is connected to such conduct in addition to the threat of civil action. Thus, the penalty attached to canvassing the house of a resident with a No Solicitation Sign more effectively promotes the Village's interest. The ordinance's registration requirements also likely deter Jehovah's Witnesses from canvassing homes with No Solicitation Signs and forms because they are aware that the Village now has information — name, address, organization or cause — helpful in apprehending someone who ignores a resident's wishes. The extra deterrence the ordinance creates promotes the Village's interest in protecting its residents from undue annoyance and that interest "would be achieved less effectively absent the [ordinance]." *Ward*, 491 U.S. at 799.

As to the latter method of furthering the interest — the registration requirement — the dissent misstates the issue. It is not whether the requirement deters by increasing the degree of punishment. Rather it is whether the requirement increases the likelihood of punishment. It does.

The Village's interest in preventing fraud would also be achieved less effectively absent the ordinance. Absent a registration requirement, the Village has no way of assessing whether canvassers are in fact affiliated with an organization such as Jehovah's Witnesses or are instead perpetrators of fraud using a Jehovah's Witnesses claim as cover. Requiring the individuals to identify themselves as having a relationship with the organization provides the Village with information helpful in making this assessment. Consequently, the ordinance better equips the Village in its attempt to turn away perpetrators posing as Jehovah's Witnesses. Moreover, the

requirements go further than anti-fraud laws in deterring such individuals from committing fraud because they know the Village has information that would make it easier to apprehend them were they to do so.

We believe the dissent misunderstands our reasoning and the effect of the registration requirement. Its argument that the requirement burdens substantially more speech than necessary because it requires registration "not only for those wishing to engage in sales transactions — a possible avenue for fraud — but also for those wishing to engage in political, religious, or social advocacy" assumes too much. First, it assumes that the only avenue for engaging in fraud is posing as a sales person. That need not be the only avenue. Second, it assumes that one who intends to engage in fraud by posing as a sales person would be honest enough to inform the Village that he was intending to pose as a sales person and thus would register as such. That is not necessarily the case. It is also possible that the criminal would inform the Village that he was going to engage in political, religious, or social advocacy in order to avoid the registration requirement. It would be nice if the Village had the ability to discern in advance who, or what type of groups, will commit fraud. However, it does not. And absent such ability, the Village does not burden substantially more speech than necessary by requiring all individuals seeking to go door-to-door to register.

Moving to the final requirement of intermediate scrutiny, we believe that the ordinance leaves open ample alternatives of communication. Indeed, the ordinance does not foreclose the option of going door-to-door; one only need register first.

Plaintiffs' argument that the ordinance effectively forecloses that option to them because of their religious convictions, as we will discuss below, is foreclosed by the Court's decision in *Employment Division v. Smith*.[10] Further, there are several alternatives to door-to-door canvassing: Jehovah's Witnesses may spread their message at stores, on street corners, in restaurants, in parks, and other public forums.

This is not to say, as the dissent suggests we are holding, that meeting the ample alternatives requirement alone is sufficient to pass constitutional muster. Indeed, if that were the case, we would have foregone the rest of the analysis, evaluated the alternatives available to Jehovah's Witnesses, and called it a day.

As the ordinance satisfies the ample alternatives as well as the other requirements of intermediate scrutiny, we hold that the ordinance does not violate plaintiffs' free speech rights.

B. Free Exercise Claims

1. Whether the Ordinance is Unconstitutional

We reach the same conclusion with respect to plaintiffs' free exercise challenges. Other than arguments that the ordinance fails strict scrutiny, plaintiffs offer no arguments for why the ordinance violates their free exercise rights.

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10. Plaintiffs and dissent argue that the Village could have included in the ordinance an exception from its requirements for Jehovah's Witnesses. If the Village had included such an exception, however, the ordinance would not be content neutral. Therefore, we do not believe that to be a viable alternative here.

Instead, they cite a handful of Supreme Court cases all of which, they claim, stand for the proposition that the "Supreme Court has continuously held that Jehovah's Witnesses cannot be required to obtain a permit in order to engage in door-to-door religious speech." And that "[i]n not one [of those cases] did the Supreme Court hold that Jehovah's Witnesses must obtain a permit prior to engaging in door-to-door dissemination of Bible-based ideas or literature." That is probably because few of those cases involved an ordinance requiring such a permit. Instead, many of the ordinances flatly prohibited the dissemination of ideas either in a public forum or door-to-door. *See Marsh v. Alabama*, 326 U.S. 501, 504 (1946); *Martin*, 319 U.S. at 142; *Schneider v. New Jersey*, 308 U.S. 147, 154, 156 (1939). The ordinances that did require a permit, unlike the Village's ordinance, left the decision whether to grant the permit at the discretion of a municipal officer. *See Tucker v. Texas*, 326 U.S. 517, 519 (1946); *Cantwell*, 310 U.S. at 302; *Schneider*, 308 U.S. at 158; *Lovell*, 303 U.S. at 451. In short, contrary to plaintiffs' assertions, not one of these cases mandates a finding that the ordinance violates their free exercise rights.

Nor does a general review of the ordinance under current law warrant such a finding. Under recent Supreme Court precedent, a law that is content neutral and of general applicability does not violate an individual's free exercise rights. *See Smith*, 494 U.S. at 879; *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531-32 (1993). One that is not content neutral or not of general applicability, on the other hand, must pass strict judicial scrutiny. *See Church of Lukumi Babalu Aye*, 508 U.S. at 531-32.

We find the law to be both content neutral and of general applicability. In the context of free exercise challenges, a law is not content neutral if "the object of the law is to infringe upon or restrict religious practices because of their religious motivation." *Id.* at 532. To determine whether the law has such an object, we look to the language of the law; the operation of the law; and how officials apply the law. *See id.* at 532-35. A law is facially content based if it refers to a religious practice without a discernable secular meaning. *See id.* at 532. The ordinance does not. While the No Solicitation Form did refer specifically to Jehovah's Witnesses, it is not part of the text of the ordinance. Further, the district court ordered the Village to remove that language. The ordinance is also neutral in its operation; it imposes the same burdens on all individuals or organizations seeking to canvass door-to-door. *See id.* at 535. Finally, we believe that the Village officials have applied the ordinance neutrally. There is no indication that the Mayor discriminated against religious organizations in determining whether to grant permits. Indeed, there is little room for him to make any decision once the applicant completes the Registration Form. And contrary to plaintiffs' assertion, the Mayor's statements that he would not grant Jehovah's Witnesses an exemption from the ordinance's time restrictions on canvassing does not compel a finding that he unequally applied the ordinance. He has never applied the ordinance's time restrictions to them because they have never requested an exemption from the restrictions.

We also find that the law is of general applicability. To be generally applicable, the law must not be the product of a government action that, in pursuit of legitimate interests,

"impose[s] burdens only on conduct motivated by religious belief essential to the protection of the rights guaranteed by the Free Exercise Clause." *Id.* at 543. The ordinance is not the product of such action. The Village has made clear that its interest was in preventing fraud and protecting its residents from undue annoyance. In pursuing these ends, the ordinance burdens any individual seeking to canvass door-to-door. As the ordinance is content neutral and generally applicable, we hold that it does not violate plaintiffs' free exercise rights.

2. Exemption from the Ordinance

For the same reason, we deny plaintiffs' request for an exemption from the requirements of the ordinance. Plaintiffs argue that they should be granted an exemption from the ordinance because seeking permission to spread their religious beliefs violates their religious convictions. To support their argument they cite *Wisconsin v. Yoder*, 406 U.S. 205 (1972), for the proposition that where an individual's beliefs are a matter of deep rooted religious convictions and complying with the regulation would violate those convictions, the individual should be granted an exemption from complying with the regulation.

That is not the law. As the Court noted in *Smith*, it "has never held that an individual's religious beliefs excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to regulate." *Smith*, 494 U.S. at 878-79. Our review indicates that the ordinance is valid, and therefore, plaintiffs must comply with it.

In conclusion, we affirm the district court's judgment that the ordinance does not violate plaintiffs' First

Amendment rights and we deny them an exemption from complying with the ordinance. We now review the Village's challenges to the district court's judgment awarding plaintiffs attorneys' fees.

III. ATTORNEYS' FEES

Briefly, the Village argues that the district court erred in awarding attorneys' fees by concluding (1) that plaintiffs were the prevailing party and (2) that they obtained substantial relief and were thus entitled to compensation for the time their attorneys expended on the entire course of the litigation. It contends that plaintiffs' relief was so small — and not of the type sought — that they cannot be considered the prevailing party. And, even if they are, by no means did they obtain the relief for which they hoped — being exempted from complying with the ordinance — and therefore cannot be considered to have achieved substantial success.

In reviewing an award of attorneys' fees under § 1988, we review the factual findings underlying the district court's determination of prevailing status for clear error and its award of attorneys' fees for abuse of discretion. *See Gregory v. Shelby County*, 220 F.3d 433, 446 (6th Cir. 2000). "A district court abuses its discretion when it relies on clearly erroneous findings of facts" or "when it improperly applies the law or uses an erroneous legal standard." *Owner-Operator Indep. Drivers Ass'n, Inc. v. Bissell*, 210 F.3d 595, 597 (6th Cir. 2000).

We have no trouble agreeing with the district court's conclusion that plaintiffs were in fact the prevailing party.

As a result of the litigation, their legal relationship with the Village was altered in a manner which they sought. *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The question of whether this success is sufficient to be considered substantial is much tougher. The Village is correct that plaintiffs must still register prior to canvassing, and eliminating that requirement was a focal point of their lawsuit. As it is a close call, we defer to the factual findings of the district court and conclude that it did not abuse its discretion in awarding attorneys' fees in the amount of $39,340.87; $15,464.04 in out of pocket expenses; and $4,087.50 for paralegal costs.

Therefore, we affirm the district court's judgment awarding plaintiffs attorneys' fees and costs.

IV. CONCLUSION

For the foregoing reasons, we affirm the district court's judgments.

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CONCURRING IN PART, DISSENTING IN PART

RONALD LEE GILMAN, Circuit Judge, concurring in part and dissenting in part. I agree with the majority that the Village of Stratton's ordinance is not unconstitutionally vague and does not violate the free exercise rights of the Jehovah's Witnesses. Because the ordinance is content neutral on its face, I also agree that intermediate scrutiny is the proper standard applicable to its review. Finally, I agree with the majority's decision to affirm the award of attorneys fees to the Jehovah's Witnesses.

I disagree, however, with the majority's application of the intermediate scrutiny standard, and would hold that the ordinance violates the First Amendment by burdening substantially more speech than is necessary to further the Village's legitimate interests. *See Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989). Consequently, I would declare that the ordinance's permit requirement is unconstitutional as applied to the Jehovah's Witnesses.

The Supreme Court has long since recognized that the regulation of door-to-door solicitors must comport with the First Amendment. *See Cantwell v. Connecticut*, 310 U.S. 296 (1940) (striking down an ordinance specifically requiring door-to-door solicitors for religious, charitable, or philanthropic causes to first obtain a permit). Content-neutral regulations, on the other hand, are analyzed under an intermediate scrutiny standard of review. *See Ward*, 491 U.S. at 798-99 (applying intermediate scrutiny to content-neutral noise regulations). This standard, however, does not mean that a content-neutral regulation "may burden substantially

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more speech than is necessary to further the government's legitimate interests." *Id.* at 799. Rather, a content-neutral regulation must "focus[ ] on the source of the evils the [government] seeks to eliminate" and "eliminate them without at the same time banning or significantly restricting a substantial quantity of speech that does not create the same evils." *Id.* at 800 n.7.

In the present case, the Village has articulated a legitimate interest in eliminating two evils — fraud and unwanted annoyance. The question, then, is whether the means chosen by the Village to implement its goals significantly restricts a substantial quantity of speech that does not create the same evils. I am of the opinion that the ordinance does just that.

First, by subjecting noncommercial solicitation to its permit requirements, the ordinance restricts a substantial amount of speech unrelated to the prevention of fraud. The ordinance requires a permit not only for those wishing to engage in sales transactions — a possible avenue for fraud — but also for those wishing to engage in political, religious, or social advocacy. Indeed, the Village's own "No Solicitation Registration Form" acknowledges that the ordinance reaches political candidates, Christmas carolers, and campaigners for social issues, none of whom create the threat of fraud that the Village intended to address. The ordinance therefore burdens substantially more speech than is necessary to promote the legitimate government interest of fraud protection. *See Cleveland Area Bd. of Realtors v. City of Euclid*, 88 F.3d 383, 386-90 (6th Cir. 1996) (applying an intermediate scrutiny standard to declare an ordinance unconstitutional that banned all yard signs, concluding that the ordinance

burdened substantially more speech than necessary to promote the legitimate government interest in aesthetics).

The majority emphasizes that "the ordinance does not foreclose the option of going door-to-door; one only need register first." Majority Op. at 20-21. Such an argument implies that because a person can engage in speech once he or she has obtained a permit, all permit requirements are constitutional. This is clearly *not* the law. *See Cantwell*, 310 U.S. at 303-07. Although a permit requirement is not per se invalid, it bears a heavy burden to pass constitutional muster because it gives public officials the power to deny the use of a forum in advance of actual expression. *See Community for Creative Non-Violence v. Turner*, 893 F.2d 1387, 1390 (D.C. Cir. 1990) (finding unconstitutional, on the basis of intermediate scrutiny, an ordinance requiring permits of all people wishing to engage in content-neutral, noncommercial speech on transit authority property, where the "[p]ersons desiring to engage in any organized free speech activities in the . . . forum are subject to the permit requirement"). Consequently, the type of persons and entities subject to the permit requirement must be analyzed to determine an ordinance's impact on speech. *See id.* at 1393.

The majority also states that the Jehovah's Witnesses "may spread their message at stores, on street corners, in restaurants, in parks, and other public forums." Majority Op. at 21. The Supreme Court, however, has stressed the unique role of door-to-door solicitation as a means of communication, stating that "as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking political support . . . . Door to door

distribution of circulars is essential to the poorly financed causes of little people." *Martin v. City of Struthers*, 319 U.S. 141, 146 (1943). I believe that this reasoning applies with equal force to the communication of religious beliefs. The availability, therefore, of other outlets for such speech does not alleviate the special burden that this ordinance places on door-to-door solicitation.

The narrowly tailored requirement demands a balance between the legitimate interests of the government and the constitutional rights of individuals. However, the majority opinion concludes in a very generalized way that the Village of Stratton's registration requirement is constitutional because it "more effectively promotes the Village's interest." Majority Op. at 19. But just as the majority accuses the dissent of assuming that those who intend to commit fraud would register as salespeople, the majority assumes (in my view, incorrectly) that those intending to commit fraud would in fact register at all.

As to the Village's asserted interest in protecting homeowners from "unwanted annoyances," this interest can be achieved by less restrictive means, such as by enforcing laws against trespass. *See Discovery Network, Inc. v. City of Cincinnati*, 946 F.2d 464, 473 n.14 (6th Cir. 1991) (finding unconstitutional, even under intermediate scrutiny, a Cincinnati ordinance prohibiting the distribution of commercial handbills on public property because "there are many options available to the city that would address its aesthetic, safety, and proliferation concerns without placing the significant burden on commercial speech that the ordinance does").

Indeed, the Village already effectively achieves its interest in protecting homeowners from unwanted annoyances through the section of the ordinance that forbids solicitation at residences where the homeowners have posted "No Solicitation" signs. The same penalty, a fourth-degree misdemeanor, is imposed for violating the "No Solicitation" section as for violating the registration section of the ordinance. Thus someone who would register because they are deterred by the penalty for failing to do so would presumably already be deterred from ignoring a "No Solicitation" sign, while someone who is willing to risk the penalty imposed for ignoring a "No Solicitation" sign would presumably also be willing to risk the penalty for failing to register. The registration requirement, accordingly, is not narrowly tailored to protect homeowners from unwanted annoyances. *See Ward*, 491 U.S. at 799 (stating that a regulation is narrowly tailored under the intermediate scrutiny standard if it "promotes a substantial government interest that would be achieved less effectively absent the regulation").

"Our cases make clear that in assessing the reasonableness of a regulation [that affects speech], we must weigh heavily the fact that communication is involved." *Grayned v. City of Rockford*, 408 U.S. 104, 116 (1972). Consequently, "[w]hen the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *United States v. Playboy Entm't Group, Inc.*, 120 S. Ct. 1878, 1888 (2000). This burden, however, "is not satisfied by mere speculation or conjecture; rather, a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites

are real and that its restriction will in fact alleviate them to a *material degree*." *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 625 (1995) (applying the intermediate scrutiny standard to restrictions on legal advertising) (citations omitted and emphasis added). In this case, the Village of Stratton has failed to demonstrate either the reality of the harm or the efficacy of the restriction.

For all of the reasons set forth above, I would hold that the ordinance's permit requirement is an unconstitutional infringement on the Jehovah's Witnesses' First Amendment rights.

APPENDIX H — ORDER OF THE SUPREME COURT OF THE UNITED STATES ALLOWING CERTIORARI DATED AND FILED OCTOBER 15, 2001

SUPREME COURT OF THE UNITED STATES

No. 00-1737

Watchtower Bible and Tract Society
of New York, Inc., et al.,

Petitioners

v.

Village of Stratton, et al.

ORDER ALLOWING CERTIORARI.
Filed October 15, 2001.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted limited to Question 2 presented by the petition.

October 15, 2001

APPENDIX I — ADMISSION OF EXHIBITS INTO EVIDENCE — P. 86 HEARING TRANSCRIPT

[86] * * *

MR. POLIDORO: Your Honor, at this time the plaintiffs rest.

THE COURT: All right. Are the defendants ready to proceed?

MR. CANTOR: One moment, Your Honor.

MR. POLIDORO: Your Honor, so —

THE COURT: You may.

MR. POLIDORO: Thank you, judge. So the record is clear, plaintiffs have submitted a list of exhibits as well as defendants with the understanding that both sets of exhibits will be entered into evidence upon stipulation.

THE COURT: I assume there are no objections to any of the exhibits then, counsel.

MR. CANTOR: That is correct.

THE COURT: They will all be admitted.

MR. POLIDORO: Upon that basis we rest.

* * * *

APPENDIX I(1) — PLAINTIFFS' EXHIBIT 3
(MR. BRUZZESE'S LETTER DATED JANUARY 3, 1980)

LAW OFFICE
FREIFIELD, BRUZZESE, WEHR, MORELAND
& ENGLAND CO., L.P.A.
SIXTH FLOOR
FIRST NATIONAL BANK BUILDING
P.O. BOX 1506
STEUBENVILLE, OHIO 43952
TELEPHONE 282-5323
AREA CODE 614

January 3, 1980

Mr. Vercil E. Koontz
1180 Mick Road
Wellsville, Ohio 43968

Dear Mr. Koontz:

I received your letter of December 31, 1979.

I previously forwarded your letter of December 10, 1979, to the Mayor of the Village of Stratton, along with a request, asking the Mayor and the Chief of Police to provide me with the facts which underlay complaints which were called into the police with reference to the Jehovah's Witnesses who were going from door to door.

Without knowing what facts were reported to the police, I cannot render an opinion as to what, if any, ordinance or state law was violated. As of yet, I have not received the response, detailing the facts to me as reported to the police.

Appendix I(1)

When I receive it, I will inform you as to whether the complaints justify the belief that the people going door to door were in violation of any law.

Thank you for your time and attention.

Sincerely,

s/ Frank J. Bruzzese
FRANK J. BRUZZESE

FJB:rm

APPENDIX I(2) — DEFENDANTS' EXHIBITS 7, 8 (STRATTON, OHIO STREET MAPS)

[Pages 102a-103a submitted as a Lodging]

104a-119a

APPENDIX I(3) — DEFENDANTS' EXHIBIT 10 (PHOTOGRAPHS OF STRATTON, OHIO)

[Pages 104a-119a submitted as a Lodging]

APPENDIX I(4) — DEFENDANTS' EXHIBITS 12, 13 (STRATTON POLICE DEPARTMENT MONTHLY REPORTS DATED AUGUST 1996 AND OCTOBER 1996, RESPECTIVELY)

EXHIBIT 12

Stratton Police Department
Monthly Report for August 1996

08/02/96 (Friday) 11:54 p.m. Assisted a motorist at the Municipal Building with a flat tire.

08/05/96 (Monday) 3:30 p.m. Received a report of a disturbance at the indoor pool.

08/05/96 (Monday) 8:53 p.m. Received a complaint in reference to unauthorized solicitations. Subjects were advised to obtain proper permits before any solicitation was allowed.

08/06/96 (Tuesday) 3:45 p.m. Received a report that a radar detector had been taken from a vehicle which was parked at the indoor pool. Driver stated that the doors of the car were locked but the windows were part way down.

08/06/96 (Tuesday) 8:25 p.m. Cited Ronald M. Melott (20) 2071 Dewey Avenue, East Liverpool, Ohio. Fictitious Registration and Improper Display of Plates.

08/06/96 (Tuesday) 10:25 p.m. Found the man door to the Senior Citizen's Center unlocked. Checked the building and locked the door.

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08/06/96 (Tuesday) 11:47 p.m. Received a complaint in reference to a pickup truck parked on the flyash near the Ohio Edison South Yard area. Advised the driver to remove the vehicle from that area.

08/06/96 (Tuesday) 11:53 p.m. Transported a stranded motorist to Runyon Road off of State Route 152 west of Empire.

08/07/96 (Wednesday) 2:15 p.m. Cited Ronald M. Melott (20) 2071 Dewey Avenue, East Liverpool, Ohio. Fictitious registration/Failure to file for annual registration. Vehicle towed.

08/09/96 (Friday) 6:05 p.m. Received a complaint from a resident of Ekey's Trailer Court in reference to a raccoon that was in her garbage can. Raccoon was removed to the woods and released.

08/09/96 (Friday) 11:10 p.m. At the request of the Jefferson County Sheriff's Department, backed up a Deputy Sheriff at a fight call on Wheatley Street in Empire.

08/11/96 (Sunday) 1:05 a.m. Cited Joseph L. Stewart (18) 145 Independence Square, Wellsville, Ohio. Driving without lighted headlights.

08/12/96 (Monday) 10:35 p.m. Received a report that two suspicious young male subjects had been seen in the area of Ekey's Trailer Court, near Lot # 19, which is currently unoccupied. Citizen stated that

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these boys may have been inside the vacant trailer. The door to the trailer was found to be unlocked. Nothing appeared to be missing. Secured the doors.

08/13/96 (Tuesday) 10:25 p.m. Backed up Empire Police Dept. at a domestic dispute on Wheatley Street in Empire.

08/21/96 (Wednesday) 11:54 p.m. Cited George C. Riddle (26) 150 Beacon Drive, Weirton, W. Va. Speeding, 69 mph in a 50 mph zone.

08/22/96 (Thursday) 1:43 a.m. Assisted Saline Twp. Police Dept. and Ohio State Highway Patrol at a motor vehicle accident with injuries on State Route 213 at Cool Hollow Bend, Yellow Creek.

08/22/96 (Thursday) 11:47 p.m. Backed up a Jefferson County Sheriff's Deputy at a domestic dispute at 404 Knoxville Road.

08/25/96 (Sunday) 2:29 a.m. Cited William A. Sweitzer (46) 108 S. Jefferson St., Follansbee, W. Va. Speeding, 68 mph in a 50 mph zone.

08/25/96 (Sunday) 2:48 a.m. At the request of the Jefferson County Sheriff's Department, assisted Saline Township Police Department at a car/deer accident with injuries, at the State Rest Area.

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08/27/96 (Tuesday) 12:36 p.m. Cited Charles S. Heiney (36) 208 7th Street, Wellsville, Ohio. Parking Violation, yellow zone at corner of Second Avenue and Third Streets.

08/28/96 (Wednesday) 7:53 Received a complaint from a resident of Garren's Trailer Court in reference to a neighbor's loud stereo.

08/31/96 (Saturday) 2:07 a.m. Assisted a Jefferson County Sheriff's Deputy at a disturbance call on Reese Drive in Empire.

08/31/96 (Saturday) 10:32 p.m. Cited Dashrath G. Patel (40) 140-30 Beech Ave. 3U, Flushing, N.Y. Speeding, 70 mph in a 50 mph zone.

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EXHIBIT 13

Stratton Police Department
Monthly Report for October 1996

10/02/96 (Wednesday) 11:22 p.m. At the request of the Jefferson County Sheriff's Department, checked an alarm drop at 84 Lumber Co. in Empire.

10/05/96 (Saturday) 2:52 p.m. Assisted Jefferson County Sheriff's Deputies in a Fight/Domestic Dispute on Nessley Street, in Empire. One male subject charged with Domestic Violence and lodged in the County Jail.

10/08/96 (Tuesday) 7:28 p.m. Received a complaint in reference to an unsecured storage shed in Ekey's Trailer Court. Attempted to contact the owner by telephone. Trailer Court manager was notified by a resident in reference to this situation.

10/11/96 (Friday) 9:40 p.m. Found the lights on at the indoor pool. Checked the building and turned off the lights.

10/15/96 (Tuesday) 8:22 p.m. Cited Nancy A. Cardone (18) 750 Colonial Drive, Youngstown, Ohio. Speeding, 73 mph in a 50 mph zone.

10/15/96 (Tuesday) 9:25 p.m. Cited Mark A. Olszewski (34) 746 East 24th Street, Erie, Pa. Speeding, 74 mph in a 50 mph zone.

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10/17/96 (Thursday) 1:30 p.m. Received a report that a window had been broken on the north side of the Riverside Market.

10/17/96 (Thursday) 5:10 p.m. Received a complaint in reference to 2 subjects in a blue pickup truck soliciting. Subjects were located and advised to obtain a permit or they would be arrested in the future for soliciting without a permit.

10/18/96 (Friday) 10:00 a.m. Cited Paul W. Soupart (52) 102 Jessop Dr., St. Clairsville, Ohio. Speeding, 66 mph in a 50 mph zone.

10/18/96 (Friday) 6:35 p.m. Assisted a motorist with a disabled vehicle on 2nd Avenue, near the Municipal Building.

10/19/96 (Saturday) 2:01 a.m. At 800 Stratton Hgts. Road, cited Shane C. Carpenter (24) 501 Harrison Street, Empire, Ohio, Disorderly Conduct by reason of Public Intoxication.

10/19/96 (Saturday) 3:25 p.m. Received a complaint in reference to several intoxicated subjects creating a disturbance at the Stratton Tavern. Subjects were advised to leave.

10/19/96 (Saturday) 6:45 p.m. Received a complaint in reference to a parking problem in the area of the Post Office.

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10/19/96 (Saturday) 10:15 p.m. Assisted a motorist at the Riverside Market with keys locked in a vehicle.

10/20/96 (Sunday) 1:23 a.m. At the request of the Jefferson County Sheriff's Department, backed up Saline Township Police Department at a disturbance call at the City Grill in Irondale, Ohio.

10/24/96 (Thursday) 7:15 p.m. Received a complaint in reference to a dog biting a female subject who was walking on Second Avenue near Second Street. Minor injuries to the female subject. Dog Warden has been contacted, and a report is on file with this department.

10/25/96 (Friday) 10:23 p.m. Cited Jeffrey A. Russell (40) 50551 Stagecoach Road, East Liverpool, Ohio, Stop Sign Violation, 2nd Avenue at Stratton Hgts. Road.

10/27/96 (Sunday) 12:10 a.m. Cited Douglas R. McCourt (31) RD #1 County Road 58, Irondale, Ohio, Stop Sign Violation and D.U.I. BAC = .110, 2nd Avenue at 3rd Street.

10/29/96 (Tuesday) 11:55 p.m. Found the west entrance door to the Municipal Building open. Checked the building and secured the doors.

10/30/96 (Wednesday) 9:30 a.m. Cited Janet Cook (29) 1900 Nevada Street, Wellsville, Ohio, Speeding, 63 mph in a 50 mph zone.

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10/30/96 (Wednesday) 10:05 a.m. Cited James Houchin (28) 1325 Park Blvd. East, East Liverpool, Ohio, Speeding, 63 mph in a 50 mph zone.

10/31/96 (Thursday) 5:00 p.m. Halloween patrol, both cruisers out from 5:00 p.m. to 7:00 p.m.

10/31/96 (Thursday) 5:41 p.m. Cited John L. Porter (44) 503 Jefferson Street, Toronto, Ohio, Stop Sign Violation, 2nd Avenue at Stratton Hgts. Road.

10/31/96 (Thursday) 11:17 p.m. Cited Christopher S. Phelps (18) RD #1 Box 293, JFK Highway, Toronto, Ohio, Speeding, 80 mph in a 50 mph zone, Stop Sign Violation, 2nd Avenue at 5th Street, and Underage possession of an alcoholic beverage.

APPENDIX I(5) — DEFENDANTS' EXHIBITS 17-24 (CORRESPONDENCE BETWEEN MR. BRUZZESE AND MR. MOAKE)

EXHIBIT 17

LAW OFFICES
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300 SINCLAIR BUILDING
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TELEPHONE 282-5323
FAX NO 282-5328
AREA CODE 614

VIA: FAX: (914) 878-2060 4 PAGE(S)
VIA: ORDINARY MAIL

April 17, 1998

Watchtower
Bible and Tract Society of New York, Inc.
Legal Department
100 Watchtower Drive
Patterson, NY 12563-9204

ATTENTION: RICHARD D. MOAKE,
ASSOCIATE GENERAL COUNSEL

RE: CHAPTER 116, CODIFIED ORDINANCES OF THE VILLAGE OF STRATTON, OHIO AND YOUR LETTER OF APRIL 10, 1998

Appendix I(5)

Dear Mr. Moake:

Your April 10, 1998 letter, addressed to the Honorable John M. Abdalla, Mayor of the Village of Stratton, Ohio, has been referred to me for response.

With respect to the points raised in your letter, please be advised as follows:

1) *Definition of "Canvassers", "Solicitors", and other classes described in Section 116.01.* I believe that each of the terms included in the phrase, "canvassers, solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise and services," has a plain and ordinary meaning, which obviates the need for further specific definition in the Ordinance, itself.

However, if you have a suggested definition, please submit each definition to me, so that I can evaluate the question of whether the Ordinance should be amended to adopt a specific definition for each class identified in that section.

The Ordinance does not preclude "soliciting the attention of . . ." any person, and it does not prohibit, "explaining any . . . organization or cause,"; but rather, it prohibits the uninvited entry onto private property, for those purposes and other purposes.

The gravamen of the Ordinance is a prohibition against uninvited entry — i.e., entry in the nature of a trespass.

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2) *Speech About A "Cause".* The Ordinance does not prohibit (nor does it purport to prohibit) speech. It prohibits uninvited entry, and it regulates invited door-to-door canvassing, soliciting, peddling, hawking, etc.

3) *Invited Entry.* In your letter, you raise a third point, in which you seem to speculate on the Mayor's interpretation of the Ordinance. You say that, under the Mayor's interpretation, a Jehovah's Witness would be prohibited from going into a residence for the purpose of talking about the Bible, even if he has been invited, unless he obtains a $10.00 permit to "visit that one (1) residence." I have no reason to believe that the Mayor interprets the Ordinance that way, and I do not interpret the Ordinance that way. The Ordinance addresses invited visits by canvassers, solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise or services. It is obvious that the Ordinance has no application, at all, to an invited guest, who wishes to talk about any subject whatsoever.

If you believe that the Ordinance is not clearly limited to door-to-door canvassing, soliciting, etc., feel free to suggest any language which, in your opinion, makes that limitation clear. Then, I will give the Village Council an opportunity to consider the question of whether it will amend the Ordinance.

In the meantime, I see no evidence showing that the Ordinance has been applied to an invited guest

who accepts an invitation to visit a single residence, for any purpose whatsoever.

You correctly point out that the purpose of the Ordinance is to protect against a "risk of unwanted intrusion (and) annoyance" to Village residents. Again, if you have suggested language, which, in your opinion, better reflects that purpose, please submit it for the Village Council's consideration.

In the meantime, I know of no application of the Ordinance, where the Ordinance has been applied to a person who has accepted an invitation to another person's home.

4. *Emergency Clause*. I disagree with your view of the emergency clause for two (2) reasons. First, courts do not substitute their judgment for that of the legislative authority, with respect to the declaration of reasons in an emergency clause of a municipal ordinance. Second, I see a clear relationship between the stated purpose of the Ordinance and the activities of canvassers, solicitors, etc. who fail to identify themselves and engage in unwanted intrusions at times and in manners which cause annoyance, etc. to the ordinary citizen who is less able to identify and regulate the conduct of such persons. I do not presume to know or foresee the conduct of specific Jehovah's Witnesses in the future. I have no way of knowing whether each and every one of them goes peacefully from door to door talking about events and ideas (as you seem to

presume in the fourth issue raised in your letter). However, it is clear to me that the Ordinance does not target the Jehovah's Witnesses or any religious group, and it does not target speech. Its clear intent, purpose and application is in connection with unauthorized entry onto private property by door-to-door "canvassers, solicitors,", etc.

5) *9:00 a.m. to 5:00 p.m. Hours*. I do not agree with your fifth point. The Ordinance does not restrict the right of a resident and his invited guest to have contact and discussion during any time of the day or night. It affects only the "activity permitted under authority of this Chapter", — i.e. door-to-door canvassing, soliciting, etc. by those who register and obtain a permit.

6) *Leaving the Decision to the Resident*. Your sixth point was that the Ordinance determines the rights of each resident, with respect to the type of speech that may be conducted at his residence. I do not see any basis for that conclusion. Nowhere in the Ordinance do I see any restriction on any person's expression of any idea. What I see is a limitation upon entering private property.

I think the Village would be willing to work with you, in order to resolve the problem which you perceive. However, it does not seem productive to have people in town, appearing to be canvassing, soliciting, etc. door-to-door (and entering upon private property without the permission of the property owner), without the proper identification, registration and

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permit. That type of conduct seems to be motivated by the intent to cause confrontation, rather than solution. (Before such confrontation, a person may clearly appear to be canvassing and soliciting door-to-door, by virtue of uninvited entry [indeed, in some cases, trespass] in violation of the Ordinance, and, then, after the confrontation, they make the claim that they intended only to exercise their Constitutional Rights of Free Speech.)

The road to a solution is cooperation. Therefore, in the spirit of cooperation, I suggest:

a) Since the previous correspondence and this correspondence clearly explains the legislative intent of the Ordinance, I am inviting you to submit to me suggested language, modifications of language, and suggested amendments, which you see as appropriate to protecting Village inhabitants against uninvited entry/trespass onto their private property. I will consider those suggestions, and I will report back to you with respect to the Village's position on each suggestion.

b) In the meantime, if a member of your group intends to canvass, solicit, etc. in the Village, please let us know in advance, in order that we might avoid needless confrontation.

c) In the meantime, if a member of your group is invited to the home of a homeowner in the Village of Stratton, Ohio, that member may feel free to make that visit without fear of application of the Ordinance.

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I look forward to hearing from you at your earliest convenience.

Thank you.

Sincerely,

s/ Frank J. Bruzzese
FRANK J. BRUZZESE

FJB/tld

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EXHIBIT 18

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
LEGAL DEPARTMENT
100 WATCHTOWER DRIVE
PATTERSON, NEW YORK 12563-9204
PHONE (914) 878-7000
FAX (914) 878-2060

April 27, 1998

Frank J. Bruzzese
Attorney at Law
P.O. Box 1506
Steubenville, OH 43952

Re: Chapter 116, Codified Ordinances of the Village of Stratton

Dear Mr. Bruzzese:

Thank you for your letter of April 17, 1998, responding to my April 10, 1998, letter to Mayor Abdalla. We appreciate both the thoughts that went into your letter and its cooperative tone.

From your letter, it seems that the Village will not apply sections 116.03 through 116.07 to the activities of Jehovah's Witnesses. Thus, potential conflict stems only from section 116.01 and the enforcement and penalty sections related to it.

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As stated in your letter, the gravamen of section 116.01 is a prohibition against uninvited entry. It is on this very point that we believe the ordinance is patently defective. In effect, the ordinance makes uninvited entry on a property a trespass without requiring the property resident to first indicate to potential entrants that entry is not permitted. Although I am sure that you have access to it, for your convenience, I enclose herewith a copy of the United States Supreme Court case entitled *Martin v. City of Struthers*. This case is still good law and has been cited affirmatively in many cases since 1943. Under *Martin*, ordinances like section 116.01 are unconstitutional. A property resident may preclude entry on his property by one or more classes of people, a fact which may be made known either verbally or by posted notice. However, a municipality may not by ordinance preclude uninvited entry on private property.

Because of the nature of their activity and the manner in which they conduct it, Jehovah's Witnesses do not fall within any of the categories of persons listed in section 116.01 of the ordinance. Thus, even if the ordinance were constitutional, it would not apply to the activities of Jehovah's Witnesses.

In many communities in this country, as a courtesy to local law enforcement personnel, Jehovah's Witnesses voluntarily give the municipality advance notice by telephone that they will be conducting door-to-door ministry on a particular date and in a particular area. As a way to resolve the current matter in Stratton, our local congregation would be willing to contact the Village Police Department by telephone before conducting door-to-door ministry in the

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Village. The caller would state the approximate time that such ministry would take place, the approximate number of people involved, and the general location where they would be. In this way, your police would be aware of their activity on the particular day in question. If the Village would agree to this approach, then the issue of whether or not section 116.01 is unconstitutional would not need to be determined.

To indicate our good faith in the matter, until we hear from you, we will advise our local congregation not to conduct door-to-door activity in the Village and to restrict ministry activity to visiting residences to which they have been invited.

We look forward to hearing from you at your earliest convenience.

Yours very truly,

s/ Richard Moake
Richard D. Moake
Associate General Counsel

RDM:eln

Enclosure

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EXHIBIT 19

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
LEGAL DEPARTMENT
100 WATCHTOWER DRIVE
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PHONE (914) 878-7000
FAX (914) 878-2060

June 8, 1998

Frank J. Bruzzese
Attorney at Law
P.O. Box 1506
Steubenville, OH 43952

Re: Chapter 116, Codified Ordinances of the Village of Stratton

Dear Mr. Bruzzese:

We have received no response to my letter of April 27, 1998. We had hoped your client would accept our proposed resolution. Since we have advised members of our local congregation to refrain from door-to-door activities until we hear from you, we are hopeful of a prompt response from your client.

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Please let us know your client's position in the near future.

Yours very truly,

s/ Richard Moake
Richard D. Moake
Associate General Counsel

RDM:eln

Appendix I(5)

EXHIBIT 20

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AREA CODE 740

June 12, 1998

Watchtower
Bible and Tract Society of New York, Inc.
Legal Department
100 Watchtower Drive
Patterson, NY 12563-9204

ATTENTION: RICHARD D. MOAKE,
Associate General Counsel

RE: CHAPTER 116, CODIFIED ORDINANCES OF THE VILLAGE OF STRATTON

VIA: FAX, ONLY: (914) 878-2060 1 PAGE(S)

Dear Mr. Moake:

I received your letter of June 8, 1998, and your previous letter of April 27, 1998.

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Presently, I am in the process of researching the issues which you have raised, and drafting an Ordinance to be proposed to the Village Council.

As soon as I have completed the draft (which I should have finished in the next few days), I will send you a copy for your review and comment.

Thank you.

Sincerely,

s/ Frank J. Bruzzese
FRANK J. BRUZZESE

FJB/tld

Appendix I(5)

EXHIBIT 21

LAW OFFICES
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AREA CODE 740

June 17, 1998

Watchtower
Bible and Tract Society of New York, Inc.
Legal Department
100 Watchtower Drive
Patterson, NY 12563-9204

VIA: FAX, ONLY: (914) 878-2060 7 PAGE(S)

ATTENTION: RICHARD D. MOAKE,
Associate General Counsel

RE: "NO SOLICITATION" ORDINANCE

Dear Mr. Moake:

I have continued doing legal research, in order to address each one of the Constitutional criticisms that you have raised, and, as a result of that research, I have drafted the attached

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proposed Ordinance, to amend the Village's Ordinance, in order to avoid an unnecessary litigation, while, at the same time, preserving reasonable regulations which are designed to prevent trespass, invasions of privacy, and solicitation by unidentified or illegitimate con artists.

Please review the attached draft, to see if it satisfactorily addresses each of your constitutional concerns.

The gist of the Ordinance is as follows:

1) Section 116.01 declares that soliciting *without a permit* is declared to be a nuisance and is prohibited.

2) Section 116.02 authorizes the police to prevent people from soliciting without a permit.

3) Section 116.03 requires door-to-door solicitors to register with the Office of the Mayor, in order to get a permit. On the "Solicitor's Registration Form", they must identify themselves, their organization, their address, the nature of their business, the *specific address* of each property at which they intend to solicit, the length of time for which a permit is requested, and other informatio...

4) Section 116.04 *automatically* entitles an applicant to a permit, if he properly fills out the "Solicitor's Registration Form," and he pays $10.00. (However, the permit entitles him to go only to the specific addresses which he listed in his "Solicitor's Registration Form.")

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Section 116.04 requires the solicitor to show his permit, when he is requested to do so by a police officer or any person who he solicits.

If a solicitor has a permit, he is *exempt from Section 116.01*. (That means that the mere fact that he is going door-to-door is not a nuisance, *unless he goes to an address which he failed to list on his form, or unless he goes to an address which is prohibited under Section 116.07.*)

5) Section 116.05 restricts soliciting between the hours of 9:00 a.m. and 5:00 p.m.

6) Section 116.06 authorizes the Mayor to deny a permit only for *specific* reasons. (The Mayor does not have any discretion which would enable invidious discrimination.)

It also authorizes the Mayor to revoke a permit that has previously been issued, if revocation is based on a specific ground.

7) Section 116.07 authorizes the *property owner/occupant* to prohibit solicitation, *even if the solicitor has a permit*.

It is the *property owner/occupant* who makes the choice. The property owner/occupant can file a "No Solicitation Registration Form" with the Office of the Mayor, and post a "No Solicitation" sign on his property. If he does so, *no one* (even someone

who holds a permit) may enter into his private property to solicit at his property, unless he specifically lists them as an *exception*.

The property owner can give the Mayor a list of people or organizations who *are allowed* to solicit. (For example, if he doesn't mind the Boy Scouts, Girl Scouts, a church organization (including the Jehovah's Witnesses), or other class of solicitor, he can, simply, list them as an exception. [See Section 116.07(b)(3).])

If the property owner does not list a person or organization as an exception, the property owner is telling the Village (on his "No Solicitation Registration Form") that the solicitor is a *trespasser*.

The *bottom line* is that the *Village* will not be making the choice as to which type of people or organizations may solicit. The Village will not discriminate at all. The Village will issue a permit to *everyone* who properly registers. *However,* the *private citizen* who owns property in the Village *will* make the choice, as to who is allowed to solicit on his property. In his "No Solicitation Registration Form" he can list any organization that he does not object to. *He* is telling the Village that *he* prohibits solicitation, by filing a "No Solicitation Registration Form" and by posting his property with a "No Solicitation" sign.

Then, anyone who engages in solicitation (with or without a permit) is violating the Ordinance, unless the property owner specifically listed that solicitor as an exception.

The Village will treat everyone alike, whereas the property owner gets to say who is allowed to come onto his property and who is not allowed. What do you think?

Thank you.

Sincerely,

s/ Frank J. Bruzzese
FRANK J. BRUZZESE

FJB/tld
Attachment

Appendix I(5)

ATTACHMENT

ORDINANCE NO. 1998-

ORDINANCE REGULATING UNINVITED PEDDLING AND SOLICITATION UPON PRIVATE PROPERTY IN THE VILLAGE OF STRATTON, OHIO, AND AMENDING ORDINANCE NO. 1996-__ OF THE ORDINANCES OF THE VILLAGE OF STRATTON, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that Ordinance No. 1996-__ of the Ordinances of the Village of Stratton, Ohio, which was passed on _____, 1996, is hereby amended, by replacing the language of said Ordinance No. 1996-__ in its entirety, with the following language:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that, pursuant to authority granted in Section 715.61 of the Ohio Revised Code, and pursuant to Home Rule powers vested in the Village under Section 3, Article XVIII of the Ohio Constitution, the Codified Ordinances of the Village of Stratton, Ohio are hereby amended by the adoption of the following Chapter and Codified Ordinance Sections.

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CHAPTER 116

Peddlers and Solicitors

116.01 Uninvited peddling and soliciting declared a nuisance.

116.02 Enforcement.

116.03 Solicitor's Registration and Permit — Prohibition of unregistered solicitation, etc.

116.04 Issuance of permit; fee, content and display; effect.

116.05 Time limitations.

116.06 Denial or Revocation of permit.

116.07 Owner/occupant prohibition — "No Solicitation" Registration.

116.98 Penalty.

CROSS REFERENCES

Power to inspect food products — see Ohio R.C. 715.46
Power to regulate — see Ohio R.C. 715.61 et seq.
Home solicitation sales — see Ohio R.C. 1345.21 et seq.
Charitable solicitations — see Ohio R.C. Ch. 1716
Trespassing — see Ohio R.C. 2909.21
Frozen desserts — see Ohio R.C. 3717.51 et seq.
Littering — see Ohio R.C. 3767.20

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116.01 UNINVITED PEDDLING AND SOLICITING DECLARED A NUISANCE.

The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

116.02 ENFORCEMENT.

The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

116.03 REGISTRATION REQUIRED — PROHIBITION OF UNREGISTERED SOLICITATION, ETC.

(a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a permit to do so.

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(b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:

(1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and,

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

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116.04 ISSUANCE OF PERMIT; FEE, CONTENT AND DISPLAY.

Each Registrant who complies with Section 116.03(b) shall be furnished a permit upon the payment by the Registrant of a fee of ten dollars ($10.00). The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrant's Solicitor's Registration Form.

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

116.05 TIME LIMITATIONS.

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. This time limitation shall be stated on the permit.

116.06 DENIAL OR REVOCATION OF PERMIT.

Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:

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(a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.

(b) Fraud or misrepresentation contained in the Solicitor's Registration Form.

(c) Fraud, misrepresentation or false statements made in the course of conducting the activity.

(d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.

(e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

(f) The permittee ceases to possess the qualifications required in this chapter for the original registration.

The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with law.

116.07 OWNER'S/OCCUPANT'S PROHIBITION AGAINST ENTRY.

(a) Notwithstanding the provisions of any other Section of this Chapter 116, any person, firm or corporation who is the owner or lawful occupant of private property within the

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territorial limits of the Village of Stratton, Ohio, may prohibit the practice of going in or upon the private property and/or the private residence of such owner or occupant, by uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors, by registering its property in accordance with Subdivision (b) of this Section and by posting upon each such registered property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such property.

(b) The registration authorized by Subsection (a) hereof shall be made by filing a "No Solicitation Registration Form", at the office of the Mayor, on a form furnished for such purpose. The form shall be completed by the property owner or occupant and it shall then contain the following information:

(1) The name and address of the owner or occupant who wishes to prohibit uninvited canvassing, soliciting, peddling, hawking, merchandising and/or transient vending upon the private property of the owner or occupant;

(2) The specific address of each property at which the owner or occupant prohibits such conduct; and,

(3) A written and signed statement which reads:

"I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited

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canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

_____

_____

_____

_____

_____

_____

_____

_____"

Appendix I(5)

(c) No uninvited canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services, shall go in or upon the private property of an owner or occupant of property who has registered and posted such property in accordance with Subsections (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

(d) The holder of a permit issued pursuant to Section 116.04 of this Chapter shall not be exempt from the prohibition contained in Subsection (c) of this Section. The holder of such permit shall not go in or upon any private property which has been registered and posted in accordance with Subsection (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

116.99 PENALTY.

(a) Violation of Section 116.01 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section ___.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(b) Violation of Section 116.03 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section ___.99 of the Codified Ordinances of the Village of Stratton, Ohio.

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(c) Violation of Section 116.07(c) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section ___.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(d) Violation of Section 116.07(d) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section ___.99 of the Codified Ordinances of the Village of Stratton, Ohio.

SECTION 2: This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the Village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

SECTION 3: This Ordinance shall be in full force and effect immediately upon its passage.

_____
MAYOR

ATTEST: _____
CLERK

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EXHIBIT 22

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
LEGAL DEPARTMENT
100 WATCHTOWER DRIVE
PATTERSON, NEW YORK 12563-9204
PHONE (914) 878-7000
FAX (914) 878-2060

July 2, 1998

Frank J. Bruzzese
Attorney at Law
P.O. Box 1506
Steubenville, OH 43952

BY FAX AND REGULAR MAIL

Re: Chapter 116, Codified Ordinances of the Village of Stratton

Dear Mr. Bruzzese:

Thank you for your letter of June 17, 1998, about the proposed modifications to Chapter 116 of Stratton's ordinances. I was on assignment out of the country when it arrived and so was unable to respond until now. Please accept these comments simply as my observations, as I do not believe that we can negotiate the content of a municipal ordinance. If they are valid, perhaps you will consider them in your final draft.

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At the outset, it seems to me that the proposed revised ordinance does not apply to the door-to-door ministry of Jehovah's Witnesses. As we have previously written, Jehovah's Witnesses call at residences to converse with the occupant about some topic of interest and about the Bible. In their door-to-door ministry, they do not canvass, solicit, peddle, hawk, or sell anything, and they do not make such calls for the purpose of advertising, promoting, selling, and/or explaining any product, service, organization, or cause. Thus, if passed, we would consider the ordinance as not applying to Jehovah's Witnesses, whether or not it otherwise would pass review on a constitutional basis.

Your deletion from section 116.01 is good for free speech in Stratton. Adding the reference to the permit in that section is logical from a drafting standpoint.

Some practical problems are inherent in section 116.03(b)(5). Unless a complete listing of all residence addresses in the village is maintained at the Mayor's office, people desiring permits will be forced to drive throughout the village to obtain addresses. For those desiring to engage in the regulated conduct at many or all residences in the village, this will present a logistical problem. It will also add to vehicular traffic on village streets. Will the statement 'all residences in the village' be deemed sufficient? It is not uncommon for residences to lack identifying addresses that are visible from the street. How should those be listed in order to comply with the ordinance? From a legal standpoint, I fail to see why it is necessary for an applicant to list each specific residence that he intends to visit (or why the permit issued under section 116.04 should be limited to such addresses).

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The proposed ordinance seems to indicate that the permit will be valid for the length of time stated on the registration form under section 116.03(b)(4). What if the registrant states that the length of time desired is 'permanent' or 'continuously' or words to that effect? Will a permanent permit be issued?

The federal courts have ruled that it is not legal to charge a fee for the 'privilege' of exercising first amendment rights (see, e.g., *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870 (1943)). The registration fee under section 116.04 is thus inappropriate.

No federal appellate court case has upheld an ordinance limiting noncommercial first amendment activity to between 9:00 a.m. and 5:00 p.m. Although the United States Supreme Court has not ruled on the issue, federal courts of appeals have ruled against municipal ordinances that prohibit such activity after 5:00 p.m.

The addition of section 116.07 allows individual residents to give notice that they do not want uninvited solicitations. With this addition, it seems that the village does not need to otherwise regulate noncommercial speech activity. The ordinance could merely state that all persons described in section 116.01 must comply with section 116.07. If the village wants to further regulate commercial (including fund-raising) speech activity by requiring registration, payment of a fee, and a permit, it could do so. Such would be unnecessary for activity involving noncommercial speech. In other words, since residents would have a formal way of notifying unwanted visitors, there is no need to require registration by those conducting only noncommercial speech activity.

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Even though we believe that neither the existing ordinance nor the proposed revised ordinance applies to the activities of Jehovah's Witnesses, the local congregation would be willing to contact the Police Department in advance of going into the village, as was more fully discussed in my April 27, 1998, letter. If that is agreeable, then your client's concerns should be resolved without regard to the wording of the ordinance. Of course, Jehovah's Witnesses would abide by any posted sign clearly indicating that their visit is not welcome.

Yours very truly,

s/ Richard Moake
Richard D. Moake
Associate General Counsel

RDM:eln

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EXHIBIT 23

WATCHTOWER
BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
LEGAL DEPARTMENT
100 WATCHTOWER DRIVE
PATTERSON, NEW YORK 12563-9204
PHONE (914) 878-7000
FAX (914) 878-2060

August 21, 1998

Frank J. Bruzzese
Attorney at Law
P.O. Box 1506
Steubenville, OH 43952

Re: Chapter 116, Codified Ordinances of the Village of Stratton

Dear Mr. Bruzzese:

We have received no response to my letter of July 2, 1998. Please let us know the status of the matter and whether our proposal for a resolution is acceptable.

Yours very truly,

s/ Richard Moake
Richard D. Moake
Associate General Counsel

RDM:eln

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EXHIBIT 24

LAW OFFICES
FREIFIELD, BRUZZESE, WEHR, MORELAND,
STRAUS & SPAHN
300 SINCLAIR BUILDING
P.O. BOX 1506
STEUBENVILLE, OHIO 43952
TELEPHONE 282-5323
FAX NO 282-5328
AREA CODE 740

September 9, 1998

Watchtower
Bible and Tract Society of New York, Inc.
Legal Department
100 Watchtower Drive
Patterson, NY 12563-9204
ATTENTION: RICHARD D. MOAKE, Associate General Counsel (Legal Department)

RE: CHAPTER 116, CODIFIED ORDINANCES OF THE VILLAGE OF STRATTON

Dear Mr. Moake:

After I received your July 2, 1998 letter containing comments on the draft modifications to Chapter 116, I incorporated some of your comments in my final draft, and presented the draft to Council, which passed Ordinance No. 1998-5, which amended Ordinance No. 1996-06.

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A copy of the Ordinance is enclosed for your reference.

In the final draft, I maintained the deletion from Section 116.01, which you characterized as "good for free speech." I added the reference to the permit in that section, as you thought would be "logical from a drafting standpoint."

With reference to your comment regarding "practical problems . . . inherent in Section 116.03(b)(5)," I concluded that a complete listing of all residence addresses in the Village would be available in the local directories and other records maintained at the Mayor's office. I further concluded that Stratton is such a small town that people could, in fact, identify addresses without practical difficulty. (Remember, it is only the address to which you intend to solicit that must be listed on the application, therefore, it is not logical to take the position that physically locating that address is a practical or unreasonable burden.)

With reference to the length of time, during which a permit will remain valid, a permit will be issued to any person who satisfies the prerequisites, provided by the Ordinance. There is no arbitrary cutoff, with reference to length of time. In answer to your question, if someone writes "permanent" or "continuously" or words to that effect, I conclude that the permit will remain in effect so long as that person continues to engage in the activity described in his application. Since the final draft deleted any charge of a fee for the permit, his applying for a new permit at a later time, as opposed to continuing his conduct under the same permit, will not raise a practical problem or legal problem for the permit holder or the Village officials, so long as the conduct continues unchanged. (Only a later failure to comply would be ground for revocation.)

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With reference to your comment in connection with Federal Court decisions which prohibit a fee for the "privilege" of exercising First Amendment Rights, I did not agree that the Registration Fee contained in the previous draft (previous draft section 116.04) was constitutionally infirm, however, the fee has been deleted. Therefore, anyone who complies with the Ordinance, will be entitled to a permit, free of charge. In fact, the final draft of the Ordinance does not leave discretion in the Mayor. Once the applicant complies with the prerequisites to a permit (all of which are objectively identifiable), the Mayor has no choice but to issue the permit, and issue it free of charge.

The Ordinance maintains the 9:00 a.m.-5:00 p.m. reference. This is not a limit on First Amendment activity. Remember, the conduct which is addressed is the *uninvited entry* onto private property.

With reference to your comment on Section 116.07 (which allows individual residents to give notice that they do not permit uninvited entries), please note that the Ordinance makes no distinction between commercial versus noncommercial activity. It gives the private property owner/occupier a way to communicate his own choice and document on a record that will be available for inspection by the person who applies for a permit. The "No Solicitation Registration Forms" will be available at the office of the Mayor, so that the person who applies for a permit may see the property owners/occupiers prohibition, if any. This is a very fair way of notifying Village officials as to who is an unwanted visitor, and this is a very fair and practical way of notifying unwanted visitors, themselves.

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It seems to me that the solicitor's duty to register and get a permit is a reasonable and constitutional requirement, which, among other things, identifies the people who go door-to-door and the nature and legitimacy of their purpose and organization, if any. It does not prohibit or limit any otherwise legal conduct; it merely requires registering in accordance with Section 116.03 and carrying/exhibiting the permit in accordance with Section 116.04.

It is the owner/occupant who has the power to prohibit entry under this Ordinance, once the applicant has obtained his permit.

In my opinion, the final draft protects all constitutional freedoms of any person who wants to solicit, etc., and, at the same time, protects the constitutional property rights of the private citizens, while not leaving overly broad discretion in the Village officials.

I disagree with your opinion in connection with the applicability of the Ordinance. It applies to all organizations and persons equally. There is no distinction between commercial and noncommercial. There is no distinction or exception for church organizations or religious groups. Therefore, in my opinion, each individual who intends to engage in the conduct described in the Ordinance should register as required and should carry and exhibit the permit as required by the Ordinance. Such people should not contact the Police Department (as suggested in your July 2, 1998 letter), but rather, they should come to the Mayor's office.

When the applicant appears at the Mayor's office, he/she will be able to see the registration forms of private

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property owners, who prohibit entry, etc. In addition (and as suggested in your July 2, 1998 letter), we incorporated the idea of a sign posted on each of the private addresses where such entry is prohibited by the property owner. (Remember, Section 116.07 requires the private property owner/occupier to do *two (2) things* — (1) post a "No Solicitation" sign on the property in a place visible to people who intend to enter, and (2) file the "No Solicitation Registration Form" at the Mayor's office. Thus, canvassers, solicitors, etc. have two (2) separate ways to identity the properties of citizens who have exercised their right to prohibit unauthorized entry. They can see the list (and the actual registration forms) at the Mayor's office, and they can see the "No Solicitation" signs as they go from door-to-door.

Thank you.

Sincerely,

s/ Frank J. Bruzzese
FRANK J. BRUZZESE

FJB/tld
Enclosure

APPENDIX I(6) — DEFENDANTS' EXHIBIT 34a-u (COMPLETED "NO SOLICITATION" FORMS)

EXHIBIT 34a

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 128 3rd Ave.

My name and address (where I reside):

Name: Walter & Thelma Parsons
Street Address: 128 3rd Ave.
P.O. Box: 23
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice

of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

Schwans Delivery

s/ Thelma L. Parsons
OWNER/OCCUPANT

Date: 9-10-98

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	ALLOWED (check)
1. Scouting Organizations	☑
2. Camp Fire Girls	☑
3. Childrens Sports Organizations	☑
4. Childrens Solicitation for Supporting School Activities	☑
5. Volunteer Fire Dept.	☑
6. Jehovah Witnesses	☐
7. Political Candidates	☑
8. Beauty Products Sales People	☐
9. Watkins Sales	☐
10. Christmas Carolers	☑
11. Parcel Delivery	☑
12. Little League	☑
13. Trick or Treaters during Halloween Season	☑
14. Police	☑
15. Campaigners	☑
16. Newspaper Carriers	☑
17. Persons Affiliated with _____ Church ____	☐
18. Food Salesman	☐
19. Salespersons	☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34b

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 507 5th Street

My name and address (where I reside):

Name: James & Dorothy Rudder
Street Address: 507 5th Street
P.O. Box: 48
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ James Rudder
OWNER/OCCUPANT

Date: Sept. 14, 1998

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☒
3. Childrens Sports Organizations _____ ☒
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☒
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☒
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☒
12. Little League _____ ☒
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☒
15. Campaigners _____ ☒
16. Newspaper Carriers _____ ☒
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34c

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 121 2nd Ave., Stratton, Ohio

My name and address (where I reside):

Name: Kenneth Fowler
Street Address: 121 2nd Ave.
P.O. Box: 93
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Kenneth Fowler
OWNER/OCCUPANT

Date: 9-14-98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☑
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☑
11. Parcel Delivery _____ ☑
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☑
14. Police _____ ☑
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☑
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34d

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, soliciters, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 94-Third Ave.

My name and address (where I reside):

Name: Richard & Kelly Meadows
Street Address: 94-Third Ave.
P.O. Box: PO Box 195
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Richard Meadows Kelly Meadows
OWNER/OCCUPANT

Date: 9-14-98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☑
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☑
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☑
11. Parcel Delivery _____ ☑
12. Little League _____ ☑
13. Trick or Treaters during Halloween Season _____ ☑
14. Police _____ ☑
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☑
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34e

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 811 Stratton Heights

My name and address (where I reside):

Name: Stella, Andy & Jerry Harris
Street Address: 811 Stratton
P.O. Box: 5
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Charles and Jerry Harris
OWNER/OCCUPANT

Date: 9-14-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☒
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☒
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☒
12. Little League _____ ☒
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☒
15. Campaigners _____ _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with any Church except Jehovah Witnesses _____ ☒
18. Food Salesman _____ ☒
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34f

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 402-4th St.

My name and address (where I reside):

Name: Lola Kakascik
Street Address: 402-4th St.
P.O. Box: Box 110
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Lola Kakascik
OWNER/OCCUPANT

Date: 9-11-98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☑
3. Childrens Sports Organizations _____ ☑
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☑
11. Parcel Delivery _____ ☑
12. Little League _____ ☑
13. Trick or Treaters during Halloween Season _____ ☐
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34g

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 600 6th St.

My name and address (where I reside):

Name: Paul & Connie Rohall
Street Address: 600 6th St.
P.O. Box: 87
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

Appendix I(6)

itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

Schwan's Delivery

s/ Connie Rohall
OWNER/OCCUPANT

Date: 9-11-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☒
3. Childrens Sports Organizations _____ ☒
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☒
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☒
8. Beauty Products Sales People _____ ☐
9. [illegible]s Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☒
12. Little League _____ ☒
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☐
15. Campaigners _____ ☒
16. Newspaper Carriers _____ ☒
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34h

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 94 First Avenue

My name and address (where I reside):

Name: Michael R. Wilson
Street Address: 94 First Avenue
P.O. Box: 231
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

None

s/ Michael R. Wilson
OWNER/OCCUPANT

Date: 9-11-98

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ALLOWED (check)

1. Scouting Organizations _____ ☐
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☐
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☐
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☐
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34i

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 124 3rd Ave.

My name and address (where I reside):

Name: William Householder
Street Address: 124 3rd Ave.
P.O. Box: Box 6
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ William Householder
OWNER/OCCUPANT

Date: 9-16-98

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ALLOWED (check)

1. Scouting Organizations _____ ☐
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☐
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☐
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☑
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34j

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 118 3rd Ave.

My name and address (where I reside):

Name: Joseph A. Zdinak
Street Address: 118 3rd Ave.
P.O. Box: 226
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Joseph A. Zdinak
OWNER/OCCUPANT

Date: 11-20-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☐
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☒
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34k

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 105-1st St. – Tavern

2. 107-1st St. – Truck Stop

My name and address (where I reside):

Name: Abdalla's
Street Address: 105-1st St.
P.O. Box: Box 33
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation

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Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ John M. Abdalla
OWNER/OCCUPANT

Date: 9-16-98

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ALLOWED (check)

1. Scouting Organizations _____ ☐
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☐
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☐
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☐
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34I

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 117 3rd Ave

My name and address (where I reside):

Name: James L. Martin
Street Address: 117 3rd Ave
P.O. Box: 55
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ James L. Martin
OWNER/OCCUPANT

Date: 11-20-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☒
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☒
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☒
12. Little League _____ ☒
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☒
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☒
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34m

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 401 4th St.

My name and address (where I reside):

Name: Robert Koehnlein
Street Address: 401 4th St.
P.O. Box: 46
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Robert Koehnlein
OWNER/OCCUPANT

Date: 11-2-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☒
3. Childrens Sports Organizations _____ ☒
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☒
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☒
12. Little League _____ ☒
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☒
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34n

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 122 Third Ave.

My name and address (where I reside):

Name: Sally & Mark DeBee
Street Address: 122 Third Ave.
P.O. Box: 211
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

Appendix I(6)

itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Sally & Mark DeBee
OWNER/OCCUPANT

Date: 9-21-98

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ALLOWED (check)

1. Scouting Organizations _____ ☐
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☒
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☐
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☐
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ___ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34o

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 204 2nd St. rear

My name and address (where I reside):

Name: Donald R. Brooks
Street Address: 204 2nd St. rear
P.O. Box: 202
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Donald R. Brooks
OWNER/OCCUPANT

Date: 9-25-98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☑
3. Childrens Sports Organizations _____ ☑
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☑
11. Parcel Delivery _____ ☐
12. Little League _____ ☑
13. Trick or Treaters during Halloween Season _____ ☑
14. Police _____ ☑
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34p

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. Home of Don and Mary Cunningham 204 2nd St.

My name and address (where I reside):

Name: Donald B. Cunningham
Street Address: 204 2nd St.
P.O. Box: #74
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

Appendix I(6)

itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Donald B. Cunningham
OWNER/OCCUPANT

Date: 9-26-98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☑
3. Childrens Sports Organizations _____ ☑
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☑
11. Parcel Delivery _____ ☑
12. Little League _____ ☑
13. Trick or Treaters during Halloween Season _____ ☑
14. Police _____ ☑
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☑
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34q

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 124 2nd Ave.

My name and address (where I reside):

Name: Michael & Patricia Kelley
Street Address: 124 2nd Ave.
P.O. Box: 161
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

Appendix I(6)

itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

Stratton Vol. Fire Dept.
Schwans' Foods

s/ Patricia Kelley
OWNER/OCCUPANT

Date: 9-23-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☒
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34r

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 107 Third Ave.

My name and address (where I reside):

Name: Wm. & Katherine Scheel
Street Address: 107 Third Ave.
P.O. Box: Box 163
City: Stratton State: OH Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

Schwan's Foods
Stratton Vol. Fire Dept.

s/ Katherine Scheel
OWNER/OCCUPANT

Date: 9/23/98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☒
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34s

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 304 3rd Street Stratton

My name and address (where I reside):

Name: Donald & Sandra Racz
Street Address: 304 3rd St.
P.O. Box: 203
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

Appendix I(6)

itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

s/ Donald J. Racz
s/ Sandra L. Racz
OWNER/OCCUPANT

Date: 9/14/98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☑
3. Childrens Sports Organizations _____ ☑
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☑
9. Watkins Sales _____ ☑
10. Christmas Carolers _____ ☑
11. Parcel Delivery _____ ☑
12. Little League _____ ☑
13. Trick or Treaters during Halloween Season _____ ☑
14. Police _____ ☑
15. Campaigners _____ ☑
16. Newspaper Carriers _____ ☑
17. Persons Affiliated with Stratton Church _____ ☑
18. Food Salesman _____ ☑
19. Salespersons _____ ☑

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34t

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 807 Stratton Hts.

My name and address (where I reside):

Name: Kathy Scheel
Street Address: 807 Stratton Hts.
P.O. Box: 71
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

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itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

Stratton Vol. Fire Dept.
Schwans' Foods

s/ Kathy J. Scheel
OWNER/OCCUPANT

Date: 9-23-98

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ALLOWED (check)

1. Scouting Organizations _____ ☒
2. Camp Fire Girls _____ ☐
3. Childrens Sports Organizations _____ ☐
4. Childrens Solicitation for Supporting School Activities _____ ☒
5. Volunteer Fire Dept. _____ ☐
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☐
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☒
11. Parcel Delivery _____ ☐
12. Little League _____ ☐
13. Trick or Treaters during Halloween Season _____ ☒
14. Police _____ ☐
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☐
17. Persons Affiliated with _____ Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

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EXHIBIT 34u

NO SOLICITATION REGISTRATION FORM

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

I, the undersigned, being the lawful owner or occupant of private property in the Village of Stratton, Ohio, hereby exercise my right to prohibit the practice of going in or upon the below-listed private property by uninvited canvassers, solicitors, peddlers, hawkers, merchants and vendors.

I am registering the following properties in accordance with Section 116.07 of the Codified Ordinances of the Village of Stratton, Ohio:

[List properties where the practice *is prohibited*]

1. 106 2nd Ave. Stratton

My name and address (where I reside):

Name: Irene R. Blischak
Street Address: 106 2nd Ave.
P.O. Box: Bx 77
City: Stratton State: Ohio Zip: 43961

I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers,

Appendix I(6)

itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

[left blank]

_____
OWNER/OCCUPANT

Date: 9/24/98

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ALLOWED (check)

1. Scouting Organizations _____ ☑
2. Camp Fire Girls _____ ☑
3. Childrens Sports Organizations _____ ☑
4. Childrens Solicitation for Supporting School Activities _____ ☑
5. Volunteer Fire Dept. _____ ☑
6. Jehovah Witnesses _____ ☐
7. Political Candidates _____ ☑
8. Beauty Products Sales People _____ ☐
9. Watkins Sales _____ ☐
10. Christmas Carolers _____ ☐
11. Parcel Delivery _____ ☑
12. Little League _____ ☑
13. Trick or Treaters during Halloween Season _____ ☐
14. Police _____ ☑
15. Campaigners _____ ☐
16. Newspaper Carriers _____ ☑
17. Persons Affiliated with Stratton Church _____ ____ ☐
18. Food Salesman _____ ☐
19. Salespersons _____ ☐

You may choose from this list and add more to the second page of the form if necessary.

APPENDIX I(7) — DEFENDANTS' EXHIBIT 35a-f (ALL PERMIT APPLICATIONS SINCE JANUARY 1, 1994 ON FILE WITH THE VILLAGE OF STRATTON)

EXHIBIT 35a

SOLICITOR'S REGISTRATION FORM

APPLICATION FOR PERMIT AND REGISTRATION FOR CANVASSING, SOLICITING, ETC.
(Sections 116.03 and 116.04 – Codified Ordinances)

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

The undersigned Applicant hereby makes application for a Permit and Registration, authorizing the Applicant to canvass, solicit, peddle, hawk or sell merchandise or services, as permitted under the provisions of Chapter 116 of the Codified Ordinances of the Village of Stratton, Ohio.

Applicant hereby submits the following information, as required by Section 116.03 of the Codified Ordinances of the Village of Stratton, Ohio:

1.(a) Name and home address of Applicant:

Salli Hall
PO Box 173
Empire, Ohio 43926

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(b) Applicant's residence address for the previous five (5) years:

Lot 4 Iris Drive
Toronto, OH 43964

2. Description of nature and purpose of business, promotion, solicitation, organization, cause and/or goods or services offered:

Riversweet Citrus Fruit
Choir – Stanton JR High

3. Name and address of employer or affiliated organization:

Riversweet Citrus
Mrs. Dinger – teacher
Stanton JR High – Edison Local
St. Rt. 213 – Hamm, OH 43930

* Credentials shown? Yes___ No___

4. Times during which privilege to canvass or solicit is desired?

Oct. 1998
Dec. 5th '98 2:45-9 P

5. a) Name and address of person who invited the Applicant to go in or upon private property (if any):

[left blank]

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b) List of specific addresses of each private residence at which the Registrant intends to engage in conduct described in Section 116.01.

All of Stratton except those not permitted to solicitate to per ordinance

6. Other information concerning business or purpose:

[left blank]

I hereby certify that the information given above is true, accurate and complete, as required by Sections 116.03 and 116.04 of the Codified Ordinances of the Village of Stratton, Ohio.

s/ Salli Hall
APPLICANT

s/ Sally DeBee
Grandmother

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EXHIBIT 35b

SOLICITOR'S REGISTRATION FORM

APPLICATION FOR PERMIT AND REGISTRATION FOR CANVASSING, SOLICITING, ETC.
(Sections 116.03 and 116.04 – Codified Ordinances)

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

The undersigned Applicant hereby makes application for a Permit and Registration, authorizing the Applicant to canvass, solicit, peddle, hawk or sell merchandise or services, as permitted under the provisions of Chapter 116 of the Codified Ordinances of the Village of Stratton, Ohio.

Applicant hereby submits the following information, as required by Section 116.03 of the Codified Ordinances of the Village of Stratton, Ohio:

1.(a) Name and home address of Applicant:

Katie Meadows
P.O. Box 195
Stratton, Ohio 43961

(b) Applicant's residence address for the previous five (5) years:

P.O. Box 195
Stratton, Ohio 43961

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2. Description of nature and purpose of business, promotion, solicitation, organization, cause and/or goods or services offered:

to raise money for a school related field trip.

3. Name and address of employer or affiliated organization:

Wellsville High School
Center Street
Wellsville, Ohio 43968
(330) 532-

* Credentials shown? Yes ✓ No___
School form & product

4. Times during which privilege to canvass or solicit is desired?

10:00 am – 8:00 pm Mon-Sun
Nov. 25 1998 – Dec. 2 1998

5. a) Name and address of person who invited the Applicant to go in or upon private property (if any):

N/A

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b) List of specific addresses of each private residence at which the Registrant intends to engage in conduct described in Section 116.01.

All residents except those not permitted by ordinance

6. Other information concerning business or purpose:

[left blank]

I hereby certify that the information given above is true, accurate and complete, as required by Sections 116.03 and 116.04 of the Codified Ordinances of the Village of Stratton, Ohio.

s/ Katie Meadows
APPLICANT

s/ Kelly Meadows
Parent

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EXHIBIT 35c

SOLICITOR'S REGISTRATION FORM

APPLICATION FOR PERMIT AND REGISTRATION FOR CANVASSING, SOLICITING, ETC.
(Sections 116.03 and 116.04 – Codified Ordinances)

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

The undersigned Applicant hereby makes application for a Permit and Registration, authorizing the Applicant to canvass, solicit, peddle, hawk or sell merchandise or services, as permitted under the provisions of Chapter 116 of the Codified Ordinances of the Village of Stratton, Ohio.

Applicant hereby submits the following information, as required by Section 116.03 of the Codified Ordinances of the Village of Stratton, Ohio:

1.(a) Name and home address of Applicant:

Dorothy A. Rudder
for minor Krystal Rudder

(b) Applicant's residence address for the previous five (5) years:

Dorothy A. Rudder
507-5th St. Box 48
Stratton, Ohio 43961

Appendix I(7)

2. Description of nature and purpose of business, promotion, solicitation, organization, cause and/or goods or services offered:

   Sell candy bars for school for Washington D.C. trip

3. Name and address of employer or affiliated organization:

   Irondale Elementary
   Irondale, Ohio
   phone 330-532-4458

* Credentials shown? Yes___ No___

4. Times during which privilege to canvass or solicit is desired?

   Monday thru Friday
   9:00 A.M. – 7:00 P.M.

5. a) Name and address of person who invited the Applicant to go in or upon private property (if any):

   [left blank]

Appendix I(7)

b) List of specific addresses of each private residence at which the Registrant intends to engage in conduct described in Section 116.01.

All residents except those not permitted by Ordinance.

6. Other information concerning business or purpose:

   [left blank]

I hereby certify that the information given above is true, accurate and complete, as required by Sections 116.03 and 116.04 of the Codified Ordinances of the Village of Stratton, Ohio.

s/ Dorothy A. Rudder
APPLICANT

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EXHIBIT 35d

SOLICITOR'S REGISTRATION FORM

APPLICATION FOR PERMIT AND REGISTRATION FOR CANVASSING, SOLICITING, ETC.
(Sections 116.03 and 116.04 – Codified Ordinances)

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

The undersigned Applicant hereby makes application for a Permit and Registration, authorizing the Applicant to canvass, solicit, peddle, hawk or sell merchandise or services, as permitted under the provisions of Chapter 116 of the Codified Ordinances of the Village of Stratton, Ohio.

Applicant hereby submits the following information, as required by Section 116.03 of the Codified Ordinances of the Village of Stratton, Ohio:

1.(a) Name and home address of Applicant:

Alexiz Gotschall or Ed & Tricia Gotschall
802 Stratton Hgts. Rd.
Stratton, OH 43961

(b) Applicant's residence address for the previous five (5) years:

802 Stratton Hgts. Rd.
Stratton, OH 43961

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2. Description of nature and purpose of business, promotion, solicitation, organization, cause and/or goods or services offered:

Lincoln School – Fall Fund Raiser

3. Name and address of employer or affiliated organization:

Lincoln Elementary School
Toronto, Ohio 43964

* Credentials shown? Yes___ No X

4. Times during which privilege to canvass or solicit is desired?

4 pm to 8 pm
From 9/16/98 to 10/1/98

5. a) Name and address of person who invited the Applicant to go in or upon private property (if any):

[left blank]

b) List of specific addresses of each private residence at which the Registrant intends to engage in conduct described in Section 116.01.

All houses except those not permitted by the Ordinance.

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6. Other information concerning business or purpose:

Yearly Fall fund raiser

I hereby certify that the information given above is true, accurate and complete, as required by Sections 116.03 and 116.04 of the Codified Ordinances of the Village of Stratton, Ohio.

s/ Tricia L. Gotschall
APPLICANT

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EXHIBIT 35e

SOLICITOR'S REGISTRATION FORM

APPLICATION FOR PERMIT AND REGISTRATION FOR CANVASSING, SOLICITING, ETC.
(Sections 116.03 and 116.04 – Codified Ordinances)

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

The undersigned Applicant hereby makes application for a Permit and Registration, authorizing the Applicant to canvass, solicit, peddle, hawk or sell merchandise or services, as permitted under the provisions of Chapter 116 of the Codified Ordinances of the Village of Stratton, Ohio.

Applicant hereby submits the following information, as required by Section 116.03 of the Codified Ordinances of the Village of Stratton, Ohio:

1.(a) Name and home address of Applicant:

Katie Meadows
94 Third Ave.
Stratton, Ohio 43961

(b) Applicant's residence address for the previous five (5) years:

94 Third Ave.
Stratton, Ohio 43961

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2. Description of nature and purpose of business, promotion, solicitation, organization, cause and/or goods or services offered:

High School Music Dept. Candy Sale

3. Name and address of employer or affiliated organization:

Wellsville High School Band
Center St.
Wellsville, Ohio 43968

* Credentials shown? Yes___ No___

4. Times during which privilege to canvass or solicit is desired?

9-16-98 thru 10-1-98
3:30 pm thru 8:00 pm

5. a) Name and address of person who invited the Applicant to go in or upon private property (if any):

none

b) List of specific addresses of each private residence at which the Registrant intends to engage in conduct described in Section 116.01.

All resident houses except those not permitted by Ordinance.

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6. Other information concerning business or purpose:

none

I hereby certify that the information given above is true, accurate and complete, as required by Sections 116.03 and 116.04 of the Codified Ordinances of the Village of Stratton, Ohio.

s/ Katie Meadows
APPLICANT

s/ Kelly Meadows

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EXHIBIT 35f

SOLICITOR'S REGISTRATION FORM

APPLICATION FOR PERMIT AND REGISTRATION FOR CANVASSING, SOLICITING, ETC.
(Sections 116.03 and 116.04 – Codified Ordinances)

TO: MAYOR OF THE VILLAGE OF STRATTON, OHIO

The undersigned Applicant hereby makes application for a Permit and Registration, authorizing the Applicant to canvass, solicit, peddle, hawk or sell merchandise or services, as permitted under the provisions of Chapter 116 of the Codified Ordinances of the Village of Stratton, Ohio.

Applicant hereby submits the following information, as required by Section 116.03 of the Codified Ordinances of the Village of Stratton, Ohio:

1.(a) Name and home address of Applicant:

Kelly Meadows
P.O. Box 195
94 Third Ave
Stratton, OH 43961

(b) Applicant's residence address for the previous five (5) years:

same

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2. Description of nature and purpose of business, promotion, solicitation, organization, cause and/or goods or services offered:

School fundraiser

3. Name and address of employer or affiliated organization:

Fairview School
Wellsville, OH

* Credentials shown? Yes ✓ No ___

4. Times during which privilege to canvass or solicit is desired?

Sat & Sun Afternoons & Weekday Evenings

5. a) Name and address of person who invited the Applicant to go in or upon private property (if any):

[left blank]

b) List of specific addresses of each private residence at which the Registrant intends to engage in conduct described in Section 116.01.

All resident except those not permitted by ordinance.

Appendix I(7)

6. Other information concerning business or purpose:

[left blank]

I hereby certify that the information given above is true, accurate and complete, as required by Sections 116.03 and 116.04 of the Codified Ordinances of the Village of Stratton, Ohio.

s/ Kelly Meadows
APPLICANT

s/ Leah Meadows

APPENDIX I(8) — DEFENDANTS' EXHIBIT 36 (BLANK 'PERMIT TO CANVASS TO SOLICIT, ETC.' FORM)

PERMIT TO CANVASS TO SOLICIT, ETC.

In accordance with the provisions of Section 116.04 of the Codified Ordinances of the Village of Stratton, Ohio, the Mayor of the Village of Stratton, Ohio has issued to the above Applicant a Permit, authorizing the Applicant to canvass, solicit, peddle, hawk, or sell merchandise or services, by going in or upon private property to which the Applicant is invited. Applicant has registered as required by Village Ordinance.

The address or addresses of parties inviting the Applicant appear above in Applicant's Application.

_____
MAYOR

APPENDIX I(9) — DEFENDANTS' EXHIBIT 38 (CURRICULUM VITAE OF HELEN MAC MURRAY, ASSISTANT ATTORNEY GENERAL, CHIEF, CONSUMER PROTECTION SECTION)

HELEN MAC MURRAY
34 NORTH REMINGTON ROAD
BEXLEY, OHIO 43209-1441 • (614) 237-1639

EDUCATION

1987 **The University of Toledo College of Law**
Ohio

- Juris Doctor
- Dean's List, Law Review
- National Appellate Advocacy Competition, Third Place

1984 **Stockton State College**
Pomona, New Jersey

- B.A., Political Science
- Founding Chairperson, Student Senate
- Editor-in-Chief, School newspaper

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EXPERIENCE

1995 – present **Attorney General of Ohio**
Columbus, Ohio
Chief, Consumer Protection Section

- Chief administrative officer of 80+ member staff of attorneys, investigators, educators, mediators and union support staff charged with the enforcement of Ohio's criminal and civil consumer protection laws.
- Coordinate and supervise all section legal and investigative affairs and employment actions.
- Serve as the Attorney General's media consumer spokesperson.
- Negotiate and direct communications with businesses.
- Develop relationships with other federal, state and local agencies and community and civic groups.
- Testify before and lobby the Ohio legislature.
- Speak on a multitude of consumer issues.
- Provide training for section and office wide investigative staff.
- Produce state wide publications.

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1992 – 1995 **Thompson, Hine & Flory**
Columbus, Ohio
Employment law litigator

- Senior associate with first chair responsibilities for defending employment litigation brought against Fortune 500 clients.
- Developed new business clients.
- Top billing associate.

1986 – 1992 **Squire, Sanders & Dempsey**
Columbus, Ohio
Employment law litigator

- Associate representing manufacturing clients in employment matters.
- Responsible for full litigation docket.

ACTIVITIES

Ohio Women's Bar Association, Vice President

Bexley Charter Review Commission, Co-Chairperson

Bexley Technology Commission, Founding Vice Chairperson

Bexley PTO, Secretary

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International Association of Prosecutors

Federal Bar Association

Franklin County Judicial Salute Committee

Columbus Bar Foundation Fellow

Legal Aid Society, LARP volunteer

Ohio Mock Trial Program, team advisor and judge

Franklin County Court of Common Pleas, volunteer mediator

CBA Homeless Project, volunteer attorney

YWCA, volunteer

CHOICES for Victims of Domestic Violence, Past Board President

American Inns of Court, Past President

Women Lawyers of Franklin County, Past Board Trustee

Voinovich for Governor, Media Watch Coordinator

Romanoff for Judge, Campaign Manager

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REFERENCES

Available upon request.

The breadth of my experience is most easily evidenced by the listing of some of the business and industry groups and state and federal agencies with whom I have worked over the last three years. Attached is also a list of some of the groups to whom I have spoken at their national or state membership meetings or conferences.

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BUSINESS & INDUSTRY ORGANIZATIONS

Ohio Home Builders Association

Ohio Association of Automobile Dealers (and numerous local chapters)

Ohio Pest Control Association (and numerous local chapters)

Ohio Manufactured Housing Association

Ohio Vehicle Leasing Association

Ohio Chamber of Commerce

Better Business Bureaus of Ohio (and all local chapters)

Ohio Council of Retail Merchants

Ohio Jewelers Association

National Home Furnishing Association

Automotive Service Association (auto repair and collision)

National Domestic Auto Manufacturers Association

International Auto Manufacturers Association

Ohio Rent to Own Association

Ohio Bankers Association

Ohio Ticket Brokers Association

Ohio Insurance Institute

MAPS (Motorists Assurance Professional Service)

Ohio Credit Counseling Services

Ohio Association of Movers

Ohio Autos & Trucks Recyclers Association

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Ohio Grocers Association

Ohio Ready Mixed Concrete Association

Ohio-Michigan Farm Equipment Dealers Association

Ohio Florists Association

Ohio Funeral Directors Association

Ohio Peace Officers Training Academy

National Federation of Independent Businesses – Ohio

Direct Marketers Association

Ohio Association of Mortgage Brokers

Ohio Trucking Association

Automobile Dealers Alliance of Ohio

National Center for Dispute Settlement

All major utilities' organizations (phone, gas, oil, cellular, electric, etc.)

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NATIONAL AND STATE LEVEL SPEECHES

NAAG/FBI/DOJ National Telemarketing Training Conferences (ongoing)

American Telemarketing Association

New Jersey Department of Aging

National Association of Pest Control Regulators

National Association of Consumer Protection Investigators

Midwest Regional Bankruptcy Seminar

Ohio Clerks of Court Association

Ohio Newspaper Association

Ohio Municipal League

State Employee Retirement System

Ohio Business and Professional Women Conference

Ohio Vehicle Leasing Association

Columbus Bar Association

Ohio CLE Institute

Ohio Prosecutors' Association

National Association of Home Remodelers

Ohio Council on Economic Education

Ohio Boy Scout Council

YWCA "Women's Changing World" Conference

Lifesmarts State Competition

NAACP – Columbus Chapter

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GOVERNMENTAL AGENCIES

Ohio Department of Administrative Services
Ohio Department of Aging
Ohio Department of Agriculture
State Board of Chiropractic Examiners
Ohio Civil Rights Commission
Ohio Department of Commerce – multiple divisions
Ohio Consumers' Council
State Board of Cosmetology
Ohio Department of Development
Ohio Department of Education
Board of Embalmers and Funeral Directors
Ohio Environmental Protection Agency
Ohio Expositions Commission
Office of the Governor
Ohio Department of Health
Ohio House of Representatives
Ohio Department of Insurance
Joint Committee on Agency Rule Review
Legislative Service Commission
Ohio Lottery Commission
Ohio State Medical Board

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Board of Proprietary School Registration
Department of Public Safety, Bureau of Motor Vehicles
Public Utilities Commission of Ohio
Ohio Department of Rehabilitation and Correction
Secretary of State
Ohio Senate
Ohio Department of Taxation
Ohio Department of Transportation
Ohio Tuition Trust Authority
Ohio Bureau of Workers' Compensation
Department of Youth Services
Ohio Emergency Management Services

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GOVERNMENTAL AGENCIES (Federal)

Federal Bureau of Investigation
Federal Trade Commission
Federal Communications Commission
Internal Revenue Service
U.S. Department of Justice
U.S. Marshall's Office
U.S. Postal Service
Secret Service
Social Security Administration
U.S. Department of Transportation
U.S. Customs Service
U.S. Department of Immigration
Consumer Product Safety Commission
Environmental Protection Agency
Federal Reserve System
Food and Drug Administration
Securities and Exchange Commission

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MEDIA OUTLETS

ABC News – PrimeTime Live
NBC Nightly News – The Fleecing of America
Dateline NBC
CBS This Morning
CNBC – Steals and Deals
CNN
Court TV
Inside Edition
Hard Copy
New York Times
The Washington Post
U.S. News & World Report
The Wall Street Journal

Regular appearances on all local network affiliate news programs in Columbus, Cleveland, Cincinnati and Toledo

Regular contributions to all major radio stations in the Columbus, Cleveland, Cincinnati and Toledo markets

Dozens of television appearances on local programs such as "Finer With Age" (state-wide public access) and "Friend to Friend" (local Christian station)

Frequent contributions to newspaper stories in every major Ohio newspaper, numerous Ohio local newspapers as well as state and local papers in other states

APPENDIX I(10) — DEFENDANTS' EXHIBIT 39 (DOCUMENTATION PROVIDED BY HELEN MAC MURRAY REGARDING CONSUMER FRAUD)

TRANSIENT CRIME GROUPS

FOR MANY YEARS, SOCIETIES HAVE BEEN PLAGUED BY VARIOUS BANDS OF ROVING THIEVES COMMITTING SCAMS. THESE CRIMINALS WERE INDISCRIMINATELY LABELED AS "GYPSIES". SINCE THE TERM "GYPSY" CAN BE ASSOCIATED WITH ETHNIC GYPSIES KNOWN AS "ROM", CAUTION IS NEEDED WHEN USING THAT TERM. THIS PUBLICATION WILL REFER TO THESE CRIMINALS GENERICALLY AS BEING "TRANSIENT CRIMINALS". TRADITIONALLY, LAW ENFORCEMENT HAS TREATED THESE "TRANSIENT CRIMINALS" AND THEIR ACTIVITIES WITH LOW PRIORITY. THIS LIMITED ENFORCEMENT SERVED ONLY TO MOVE THE PROBLEM FROM ONE JURISDICTION TO ANOTHER. AS LAW ENFORCEMENT AGENCIES STARTED TO SHARE INFORMATION ON THE "TRANSIENT CRIMINALS", IT BECAME APPARENT THAT THE PROBLEM WAS ACTUALLY A FORM OF NON-TRADITIONAL ORGANIZED CRIME. THIS WAS EVIDENT BY THE NETWORKING OF THE PARTICIPANTS, THE HIGH FINANCIAL LOSSES, AND THE LARGE NUMBER OF VICTIMS, OF WHICH MOST WERE ELDERLY.

INVESTIGATIONS HAVE REVEALED THAT A LARGE PERCENTAGE OF THESE "TRANSIENT CRIMINALS" CAN BE LINKED TO THREE MAJOR "TRANSIENT GROUPS" — AMERICAN GYPSIES, EUROPEAN

GYPSIES, AND THE TRAVELERS. KNOWLEDGE OF THESE GROUPS AND THE "TRANSIENT CRIMINALS" WITHIN THEM CAN BE HELPFUL TO LAW ENFORCEMENT IN ITS SEARCH FOR CRIME SUSPECTS. THE SEARCH IS GENERALLY BASED ON THE TYPE OF CRIME AND THE DESCRIPTION OF THE SUSPECTS.

THIS PUBLICATION PROVIDES A BRIEF DESCRIPTION OF THE "TRANSIENT GROUPS" AND THE "TRANSIENT CRIMINALS". A LIST OF COMMON "TRANSIENT CRIMES", SOME INVESTIGATIVE CONCERNS, AND A SOURCE FOR ASSISTANCE IN SUSPECT IDENTIFICATION IS ALSO PROVIDED. IT MUST BE UNDERSTOOD THAT THIS INFORMATION IS *GENERAL* IN NATURE, AND SHOULD NOT BE USED SOLELY AS A BASIS FOR ENFORCEMENT.

PROFILES OF THE MAJOR "TRANSIENT GROUPS"

1. AMERICAN GYPSIES
2. EUROPEAN GYPSIES
3. TRAVELERS
   - ENGLISH TRAVELERS
   - IRISH TRAVELERS
   - SCOTTISH TRAVELERS

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ETHNIC GYPSIES, ALSO KNOWN AS "ROM", ARE BELIEVED TO HAVE ORIGINATED CENTURIES AGO IN THE PUNJAB REGION OF NORTHERN INDIA. MIGRATION TOOK THEM TO CENTRAL EUROPE BY THE 14TH CENTURY. BY THE 16TH CENTURY, THEY HAD SPREAD TO NORTHERN AND EASTERN EUROPE. MIGRATION TO THE UNITED STATES BEGAN IN THE LATE 19TH CENTURY. GYPSIES ARE NOW LABELED BASED ON THE TIME SPENT IN THE UNITED STATES. THE "AMERICAN GYPSIES" GENERALLY HAVE BEEN IN NORTH AMERICA FOR APPROXIMATELY 100 YEARS, WHEREAS THE "EUROPEAN GYPSIES" FOR ONLY THE PAST 30 YEARS.

SOME SCHOLARS SUGGEST THAT THE "TRAVELERS" ORIGINATED FROM THE "GYPSIES". THIS IDEA IS BASED ON THE SIMILARITY OF THEIR "CLOSED SOCIETY" LIFESTYLE AND THEIR UNIQUE LANGUAGE (SLANG OR CANT). MOST "TRAVELERS" THOUGH DENY ANY ASSOCIATION WITH THE ETHNIC GYPSIES. THE "TRAVELER" GROUPS FIRST MIGRATED TO THE UNITED STATES, FROM EUROPE, DURING THE 18TH CENTURY, AND ARE LABELED BY THEIR COUNTRY OF ORIGIN.

THE "TRANSIENT GROUPS" HAVE RETAINED VARIOUS CULTURAL PRACTICES AND SIMILARITIES, WHICH CAN BE DOCUMENTED. THESE SIMILARITIES ARE USEFUL WHEN LOCATING AND TRACKING THESE GROUPS. HOWEVER, THE "CRIMINAL ELEMENT" WITHIN THESE GROUPS HAVE DEMONSTRATED THE ABILITY TO ADAPT THEIR

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LIFESTYLE AND CRIMINAL ACTIVITY WHEN NEEDED. CAUTION SHOULD BE USED IF TEMPTED TO DRAW ANY DEFINITIVE CONCLUSIONS ABOUT THE "TRANSIENT GROUPS" AND THE "TRANSIENT CRIMINALS".

COMMON CULTURAL DENOMINATORS

- MAINTAIN A "CLOSED SOCIETY" BY LIMITING THEIR SOCIAL CONTACT WITH PERSONS OUTSIDE OF THEIR DISTINCT GROUP
- MARRY WITHIN THEIR OWN GROUP, SOME MARRIAGES ARRANGED
- DISTINCT LANGUAGE UNIQUE TO EACH GROUP
- PATRIARCHAL FAMILY STRUCTURE (FATHER IN CONTROL)
- LIMITED USE OF PUBLIC SCHOOLS

ADDITIONAL COMMON DENOMINATORS FOR "CRIMINAL ELEMENT"

- MANY INVESTIGATORS BELIEVE THAT THE "CRIMINAL ELEMENT" MAKE UP A LARGE PERCENTAGE OF THE RESPECTIVE GROUPS
- MAINTAIN NOMADIC LIFESTYLE — WORLDWIDE NETWORK
- TARGET THE ELDERLY

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- MASTERY OF NUMEROUS THEFT TYPE CRIMES
- MASTERY OF CONFIDENCE SCAMS, INSURANCE & CREDIT FRAUDS
- FEDERAL AND STATE TAX EVASION
- LOCAL BUSINESS LICENSES NOT OBTAINED, OR ARE FRAUDULENT
- PRACTICE HIGH PRESSURE SALES TACTICS
- MAKE EXTENSIVE USE OF ALIASES AND FALSE DOCUMENTS
- FREQUENT CASINOS AND RACE BETTING TRACKS
- CRIMINAL EXPERTISE PASSED DOWN AMONG FAMILY MEMBERS

MAJOR "TRANSIENT GROUP" DESCRIPTIONS

AMERICAN GYPSIES

- THE MAJORITY MIGRATED TO AMERICA AROUND 1900. THEY ARE GENERALLY SECOND OR THIRD GENERATION AMERICANS, BUT MOST STILL SPEAK IN ACCENTED ENGLISH AND ROMANESE (GYPSY LANGUAGE).
- THEIR PHYSICAL COMPLEXION CAN VARY FROM DARK TO LIGHT.

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- THE FEMALES OF THE "CRIMINAL ELEMENT" ARE GENERALLY KNOWN FOR THEIR INVOLVEMENT IN FORTUNE TELLING, SHOPLIFTING, AND INSURANCE FRAUDS. THE MALES ARE ACTIVE IN HOME REPAIR SCAMS, IMPOSTOR BURGLARIES, VEHICLE REPAIR/SALE SCAMS, AND METAL THEFTS.
- THE "CRIMINAL ELEMENT" CAN EASILY BE MISTAKEN FOR THE "CRIMINAL ELEMENT" WITHIN THE "ENGLISH TRAVELERS" BECAUSE OF THEIR INVOLVEMENT WITH SIMILAR TYPE FRAUDS AND HAVING SOME SIMILAR SURNAMES.

COMMON AMERICAN GYPSY SURNAMES:

ADAMS, BIMBO, COOPER, COSTA, COSTELLO, DELMARO, DEMITRO, ELI, ELY, EVANS, FRANK, GEORGE, GUY, HOUSTON, JOHN, JOHNSON, KASLOV, LEE, MARKS, MARTIN, MASON, METLO, MIGUEL, MILLER, MITCHELL, MITLO, NICHOLAS, NICHOLOS, REED, RISTICH, RISTICK, SMALL, STANLEY, STERIO, STEVENS, STEVENSON, TAN, TENE, THOMPSON, ULRICH, UNAWICH, UNICH, UWANAVICH, UWANAWICH, WANKO, WASSO, WILLIAMS, YOANIS, YONIS, ZIKO.

EUROPEAN GYPSIES

- MOST ARE FROM EASTERN EUROPE, PRIMARILY FORMER IRON CURTAIN COUNTRIES (HUNGARY, POLAND, YUGOSLAVIA, ETC.)

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- RELATIVELY NEW TO NORTH AMERICA (LAST 30 YEARS)
- SPEAK BROKEN ENGLISH OR COMBINATION OF ROMANESE (GYPSY LANGUAGE) AND VARIOUS EUROPEAN LANGUAGES
- OFTEN DESCRIBED AS HISPANICS OR NATIVES OF INDIA
- SHORTER THAN THE ANGLO POPULATION WITH DARK HAIR AND EYES
- MANY WOMEN WEAR LONG SKIRTS WITH HAIR IN BUN OR BRAID
- "CRIMINAL ELEMENT" GENERALLY GROUPED BY CRIME SPECIALTY:
  - HOME INVASION THEFTS
  - STORE DIVERSION THEFTS
- MAKE USE OF "BOOSTER APRONS" TO CONCEAL STOLEN PROPERTY
- STATUS WITH IMMIGRATION QUESTIONABLE

HOME INVASION THEFTS

THERE IS A GROUP WITHIN THE EUROPEAN GYPSIES THAT SPECIALIZES IN COMMITTING RESIDENTIAL OR "HOME INVASION" BURGLARIES. A LARGE PERCENTAGE OF THESE BURGLARS

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APPEAR TO BE OF POLISH DESCENT. THEY ARE GENERALLY BASED IN NEW YORK, CHICAGO, AND OTTAWA, CANADA, WITH SMALLER GROUPS IN VIRGINIA, FLORIDA, AND NEW JERSEY. THESE CRIMINALS WILL TRAVEL IN FOUR DOOR PRIVATELY OWNED OR RENTAL VEHICLES, AND USUALLY WORK IN TEAMS OF THREE OR FOUR (MALE OPERATOR, FEMALE PASSENGERS). THE FEMALES WILL ENTER THE VICTIM'S RESIDENCE FOR THE PURPOSE OF STEALING MONEY, JEWELRY, OR SILVER. IF CONFRONTED, STATEMENTS SUCH AS "LOOKING FOR MY LOST DOG" OR "LOOKING FOR A PLACE TO RENT" ARE USED TO JUSTIFY ENTRY INTO THE RESIDENCE, AND TO DISTRACT HOMEOWNER.

COMMON HOME INVASION SUSPECT SURNAMES:

ANDRZEJ, BARBINSKI, BARCZEWSKA, BOGDANOWICZ, BRZEZINSKA, CIECIERSKA, DABROWSKA, DANIS, DEBOWSKA, DOLINSKA, DOMBROWSKI, DYTLOW, FORGAC, FYDRICH, GLOWACKA, GOWMAN, GRABOWSKA, HORVATH, JAWORSKA, KAMINSKA, KOLOMPAR, KOWALSKA, KWIATKOWSKI, LAKATOSZ, MAJEWSKA, MALINOWSKA, NOWAK, PACKOWSKA, PARCZEWSKA, PAWLOWSKA, PIHIK, PIENCZYKOWSKI, PLOWA, RAPACINSKA, SABO, SAK, STOBA, STOJKA, STRUPEK, TELESZ, WACKOWSKA, WLOCH, YAWORSKI, ZIELINSKI.

(NAMES ENDING WITH "SKA" ARE FEMININE, "SKI" ARE MASCULINE)

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STORE DIVERSION THEFTS

ANOTHER CRIMINAL GROUP, WITHIN THE EUROPEAN GYPSIES, SPECIALIZES IN STORE DIVERSION THEFTS. A LARGE PERCENTAGE OF THESE CRIMINALS APPEAR TO BE OF YUGOSLAVIAN DESCENT, AND ARE MOSTLY BASED OUTSIDE OF CHICAGO, IN LINCOLNWOOD AND SKOKIE, ILLINOIS. THEY WILL TRAVEL THE COUNTRY IN LARGE AMERICAN MANUFACTURED VEHICLES WHICH ARE PERSONALLY OWNED OR RENTED. COMMERCIAL OR RETAIL BUSINESSES LOCATED NEAR A MAJOR HIGHWAY ARE GENERALLY TARGETED. A GROUP OF BOTH MALES AND FEMALES WILL ENTER THE BUSINESS AND ATTEMPT TO DISTRACT THE BUSINESS PERSONNEL. MONEY AND/OR PROPERTY IS THEN TAKEN FROM THE BUSINESS OFFICE OR SAFE. IF THE THEFT INITIALLY GOES UNNOTICED, IT MAY MISTAKENLY BE REPORTED AS AN "INTERNAL THEFT", THEREFORE BRINGING SUSPICION ONTO THE BUSINESS EMPLOYEES.

COMMON STORE DIVERSION SUSPECT SURNAMES:

ARMANOV, BOGDANOV, DJENIKOV, DOBOBROV, GINISOV, IVANOV, JOSIPOVIC, KOMAROV, KONOVALOV, KONSTANTINOV, KOROTKOV, KUZNIKOV, MARTINOV, MORO, PAVLOV, PETROV, PETROVIC, RODIEKOV, SADRINOVIC, SAROV.

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TRAVELERS

- FIRST CAME TO THE UNITED STATES IN LARGE NUMBERS DURING THE ENGLISH MIGRATION OF THE 1700'S, AND AGAIN DURING THE IRISH POTATO FAMINE IN THE 1840'S
- HAVE TYPICALLY AMERICAN CAUCASIAN APPEARANCE, MOST WITH LIGHT COMPLEXION
- MAY PUT THEIR CHILDREN IN PRIVATE SCHOOLS
- USE TRAVEL TRAILER PARKS, MOBILE HOME PARKS, HOTELS, MOTELS, SHORT TERM APARTMENTS WITH RENTED FURNITURE, AND THE LOCAL ESTABLISHED TRAVELERS' HOMES
- THE MALE MEMBERS OF THE "CRIMINAL ELEMENT" ARE KNOWN FOR THEIR INVOLVEMENT IN HOME REPAIR SCAMS, IMPOSTOR BURGLARIES, SALE SCAMS, AND INSURANCE/CREDIT FRAUDS. THE FEMALE MEMBERS ENGAGE IN SHOPLIFTING, AND ASSIST THE MALES WITH THE INSURANCE AND CREDIT SCAMS.

THE "TRAVELERS" ARE WELL INCORPORATED INTO MAINSTREAM SOCIETY. THEY HAVE FORMED VARIOUS BUSINESSES AND SERVICES THAT CAN BE USED TO LEGITIMIZE AND SUPPORT THOSE INVOLVED IN CRIMINAL ACTIVITIES.

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- TRAILER PARK OWNERSHIP
- HOUSE TRAILER DISTRIBUTORS
- PAINT, "SEALER", ASPHALT, AND TOOL DISTRIBUTORS
- ESTABLISH CHURCHES
  - ORDAIN OWN PASTORS
  - PRINT OWN "RELIGIOUS MATERIAL"
  - PURPOSE:
    - PROVIDE MEETING PLACE (?)
    - TAX SHELTER (?)
    - MONEY LAUNDERING (?)
- MAIL DROPS AND TELEPHONE MESSAGE SERVICES ARE USED TO DISTANCE THE CRIMINALS FROM THEIR ACTIVITIES
- "NON-TRAVELERS" MAY BE USED AS LABORERS, CHECK CASHING, CONTRACT COMPLETION, ETC., TO HINDER IDENTIFICATION OF CRIMINAL GROUP
- BUSINESSES CAN ACT AS CREDIT OR EMPLOYMENT VERIFICATION FOR "TRAVELERS" INVOLVED IN CREDIT SCAMS

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ENGLISH TRAVELERS

THE ENGLISH TRAVELERS ARE BASED IN NUMEROUS LOCATIONS NATIONWIDE. THE "CRIMINAL ELEMENT" WITHIN THIS GROUP IS BEST KNOWN FOR ASPHALT PAVING SCAMS AND SEALING SCAMS. THEY ARE ALSO INVOLVED IN OTHER HOME REPAIR SCAMS, IMPOSTOR BURGLARIES, AND SALE SCAMS. THEY ARE EASILY MISTAKEN FOR THE "CRIMINAL ELEMENT" WITHIN THE "AMERICAN GYPSIES" BECAUSE OF THEIR INVOLVEMENT WITH SIMILAR TYPE FRAUDS AND HAVING SOME SIMILAR SURNAMES.

COMMON ENGLISH TRAVELER SURNAMES:

BAKER, BOSWELL, BREWER, BROADWAY, CARTER, COOPER, DAVIS, DILSAVER, HARRISON, HICKS, JOHNSTON, LOVELL, MULLEN, OAKS, RENNER, SARTIN, SMALL, SMITH, SPARROW, STANLEY, THOMPSON, WELLS, WILLIAMS, WRIGHT.

IRISH TRAVELERS

THE IRISH TRAVELERS ARE BASED IN VARIOUS LOCATIONS ACROSS THE UNITED STATES, THE MOST FAMOUS BEING A SECTION OF NORTH AUGUSTA, SOUTH CAROLINA, CALLED MURPHY VILLAGE. THE "CRIMINAL ELEMENT" WITHIN THIS GROUP IS BEST KNOWN FOR BARN OR HOUSE PAINTING SCAMS AND TOOL SALE SCAMS. THEY ARE ALSO INVOLVED IN ROOF COATING SCAMS AND LIGHTNING ROD SCAMS.

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COMMON IRISH TRAVELER SURNAMES:

BURKE, CARROLL, CORRIGAN, COSTELLO, DALEY, DONAHUE, DOUGHERTY, GORMAN, HANNAGAN, MACK, MCDONALD, MCNALLY, MULHOLLAND, NORMILE, O'HARA, RAFFERTY, RILEY, SHERLOCK, WHITE.

SCOTTISH TRAVELERS

THE SCOTTISH TRAVELERS ARE BASED IN NUMEROUS LOCATIONS NATIONWIDE. THE "CRIMINAL ELEMENT" WITHIN THIS GROUP IS BEST KNOWN FOR HOME REPAIR SCAMS AND SALE SCAMS.

COMMON SCOTTISH TRAVELER SURNAMES:

BISHOP, BURNS, CROLL, DAVIS, DOCHERTY, EVANS, FORREST, GORDON, HALLIDAY, HOLDEN, JOHNSON, JOHNSTON, KEITH, KELBIE, MARSHALL, MARTIN, MCDONALD, MCGAVIN, MCKENZIE, MCMILLAN, PARKER, PARKS, REID, STEWART, SWEET, THOMPSON, TOWNSLEY, WATSON, WHITE, WILLIAMSON, WILSON, WOODS.

"TRANSIENT CRIMINALS" WORK VEHICLE

MANY "TRANSIENT CRIMES" GO UNNOTICED BY LAW ENFORCEMENT UNTIL A PATTERN IS IDENTIFIED THROUGH CRIME REPORTS. THE TIME DELAY BETWEEN THE CRIMINAL REPORT AND ANALYSIS, USUALLY RESULTS IN THE "TRANSIENT

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CRIMINAL" HAVING MOVED ON TO OTHER JURISDICTIONS. RECOGNITION OF THE WORK VEHICLE WILL ALERT LAW ENFORCEMENT TO THE "TRANSIENT CRIMINAL'S" PRESENCE, HOPEFULLY BEFORE CRIMES ARE COMMITTED.

THE WORK VEHICLES MAY BE OBSERVED DRIVING ON THE ROADWAY OR PARKED AT HOTELS, MOTELS, TRAVEL TRAILER PARKS, MOBILE HOME PARKS, SHORT TERM APARTMENTS, AND LOCAL ASSOCIATES' HOMES. SOME BASIC VEHICLE INDICATORS:

- MAGNETIC SIGNS DEPICTING VARIOUS BUSINESSES OR SERVICES
- OUT-OF-STATE REGISTRATION PLATES, OR RECENTLY REGISTERED IN-STATE REGISTRATION PLATES
- VEHICLES TITLED TO A FEMALE OR TO A PERSON NOT INVOLVED, WHICH HINDERS LAWFUL SEIZURE OF VEHICLE
- RELIGIOUS PARAPHERNALIA SUCH AS BUMPER STICKERS, DASHBOARD STATUES, BIBLES, ETC.
- AFTER MARKET WINDOW TINT (DARKER THAN FACTORY SPECS)
- BOX TRAILERS USED TO CARRY PERSONAL POSSESSIONS

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ADDITIONAL INDICATORS IN HOME REPAIR SCAMS:

- USUALLY NEW OR GOOD CONDITION PICKUP TRUCK OR VAN
- PAINT OR SEALANT SPRAY EQUIPMENT IN VEHICLE
- PICKUP TRUCK BED COVER TO CONCEAL SPRAY EQUIPMENT
- PICKUP TRUCK BED CAP WITH SIDE LIFT WINDOWS HAVING TWIST LOCK HANDLES
- STAKE BODY TRUCKS USED TO CARRY 5 GALLON SIZE PAINT CONTAINERS AND SPRAY EQUIPMENT

ADDITIONAL INDICATORS IN ASPHALT PAVING SCAMS:

- USUALLY NEW OR GOOD CONDITION PICKUP TRUCK OR VAN THAT IS USED TO SCOUT OUT JOBS
- DUMP TRUCK PULLING FLATBED TRAILER, WITH ASPHALT SPREADER AND ASPHALT ROLLER

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ADDITIONAL INDICATORS IN METAL THEFT SCAMS:

- PICKUP TRUCK OR SUBURBAN STYLE VEHICLE PULLING STAKE BODY FLATBED OR BOX TRAILER LOADED WITH SCRAP METAL

UNUSUAL SIMILARITIES NOTED AMONG SOME "*TRAVELER*" WORK VEHICLES:

- PICKUP TRUCKS HAVING A CHROME FUEL CAP ACCESS DOOR INSTEAD OF THE USUAL PAINTED DOOR — POSSIBLY SCOTTISH
- YELLOW COLORED LIGHT ON VEHICLE ROOF
- VEHICLE DEALERSHIP DECAL REMOVED
- USE OF STEERING WHEEL LOCK — "THE CLUB"
- SMALL LEATHER HORSE SADDLE IN CAB OF TRUCK
- SMALL BABY BOOTIES HANGING FROM INSIDE MIRROR

SOME COMMON FRAUDS ASSOCIATED WITH THE THREE MAJOR GROUPS

LISTED GROUPS ARE RECOMMENDATION FOR INITIAL SUSPECT SEARCH

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FORTUNE TELLING SCAM
(AMERICAN GYPSY)

- "SLEIGHT OF HAND" TRICKS USED TO SUGGEST THAT THE PALM READER HAS "SPECIAL POWERS"
- VICTIM CONVINCED OF HAVING BEEN "CURSED"
- VICTIM PROVIDES MONEY OR MATERIAL GOODS FOR THE REMOVAL OF THE "CURSE"

SWEETHEART SCAM
(AMERICAN GYPSY)

- BEFRIEND VICTIM
- MANIPULATE VICTIM TO GAIN POSSESSION OF PROPERTY OR MONEY

INSURANCE AND CREDIT FRAUD
(ALL GROUPS)

- STAGED VEHICLE ACCIDENTS
- "SLIP & FALL" — FAKED INJURY, THREATEN CIVIL SUIT
- FALSIFIED INSURANCE APPLICATIONS — HEALTH POLICIES

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- FALSIFIED INSURANCE CLAIMS — BURGLARY, VEHICLE THEFT
- FALSIFIED CREDIT APPLICATIONS
- WELFARE FRAUD

STORE DIVERSION THEFTS
(EUROPEAN-YUGOSLAVIAN GYPSY)

- GROUP ENTERS RETAIL OR COMMERCIAL ESTABLISHMENT
- DISTRACT EMPLOYEES AND CUSTOMERS
- MONEY STOLEN FROM BUSINESS OFFICE OR SAFE
- OFTEN THOUGHT TO BE AN INTERNAL THEFT BY EMPLOYEE

SHOPLIFTING
(ALL GROUPS)

- MERCHANDISE STOLEN FROM RETAIL ESTABLISHMENT
- COMMITTED AS A GROUP EFFORT OR INDIVIDUALLY

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REFUND OR RETURN SCAMS
(AMERICAN GYPSY, TRAVELERS)

- SHOPLIFT MERCHANDISE
- RETURN MERCHANDISE FOR REFUND OR EXCHANGE

TILL TAP OR SHORT CHANGE THEFTS
(ALL GYPSY)

- APPROACH CASH REGISTER FOR SUPPOSED PURCHASE
- PRETEND CONFUSION ABOUT CURRENCY
- PALM MONEY FROM CASH DRAWER, OR SHORT PAYMENT

ASPHALT PAVING SCAM
(AMERICAN GYPSY, ENGLISH TRAVELER)

- PICKUP OR VAN USED TO SCOUT AREA
- PLOY: "LEFTOVER ASPHALT FROM ANOTHER JOB"
- BARGAIN PRICE QUOTED
- NO BUSINESS CONTRACT, OR VAGUE CONTRACT (NO DETAILS)

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- DUMP TRUCK WITH TRAILER & EQUIPMENT CALLED IN BY "CB"
- POOR-GRADE MATERIALS USED
- LITTLE OR NO GROUND SURFACE PREPARATION
- POOR QUALITY WORK-ROILED OUT TOO THIN
- EXTORT HIGHER PAYMENT

DRIVEWAY OR ROOF SEALING, PAINTING, EXTERMINATOR SCAMS
(AMERICAN GYPSY, TRAVELERS)

- OFFER "SPRAY" PROTECTION AT BARGAIN PRICE
- USE BOGUS OR DILUTED MATERIALS: MIX WITH GASOLINE OR KEROSENE
- EXTORT HIGHER PAYMENT

LIGHTNING ROD SALES OR REPAIR SCAMS
(TRAVELERS)

- OFFER FREE INSPECTION
- FIND OR CAUSE DAMAGE
- CHARGE TO SUPPOSEDLY "REPAIR" PROBLEM

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UTILITY IMPOSTOR BURGLARY
(AMERICAN GYPSY, TRAVELERS)

- POSE AS AN EMPLOYEE FROM THE GAS, ELECTRIC, WATER, OR CABLE COMPANY
- STATE THE NEED TO CHECK SYSTEM OR METERS
- OFFER CASH REFUND USING LARGE MONEY DENOMINATION TO LOCATE WHERE CURRENCY IS KEPT
- CHARGE A FEE TO CORRECT A SUPPOSED "PROBLEM", AND/OR COMMIT THEFT

HOME INVASION BURGLARY
(EUROPEAN-POLISH GYPSY)

- ENTRY UNDETECTED OR WITH SIMPLE DISTRACTION
    - NEED DRINK OF WATER, NEED USE OF PHONE OR BATHROOM, LOOKING FOR LOST PET OR RENTAL PROPERTY
- THEFT OF CASH, JEWELRY, SILVER
- CAN BE COMBINED WITH ANY FRAUD AT RESIDENCE

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VEHICLE REPAIR AND SALES SCAMS
(AMERICAN GYPSY)

- POOR QUALITY CURB SIDE REPAIRS, EXTORT HIGH PAYMENT
- ODOMETER ROLLBACKS
- MULTIPLE SALE OF THE SAME VEHICLE, "OPEN TITLE"

METAL THEFTS
(AMERICAN GYPSY)

- COMMERCIAL BUSINESS AND FOR DONATION OF SCRAP METAL TO BENEFIT THE "AMERICAN INDIANS"
- QUALITY METALS AND ITEMS STOLEN WHILE SCRAP IS LOADED

MACHINERY REPAIR OR REBUILD SCAM
(AMERICAN GYPSY)

- BUSINESS GIVEN BARGAIN PRICE QUOTE
- EXTORT HIGHER PAYMENT TO GET MACHINERY RETURNED

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TOOL SALE SCAM
(IRISH TRAVELER)

- IRISH TRAVELERS KNOWN AS "JACKERS"
- SELL INFERIOR GRADE EQUIPMENT (HYDRAULIC HOIST, HYDRAULIC PRESS, DRILL PRESS, BAND SAW, ETC.)
- WARRANTIES ARE NON-EXISTENT, MISREPRESENT VALUE
- SOME EQUIPMENT BRAND NAMES: CAROLINA TOOL & EQUIPMENT, ELITE MANUFACTURING, HI-QUALITY EQUIPMENT, IMPALA EQUIPMENT, RAMCO, SHOP MASTER EQUIPMENT, TOOL MASTER
- NON-TRAVELER GROUP HAS ALSO TAKEN UP THIS SCAM

HOUSE TRAILER SALE SCAM
(TRAVELERS)

- PURCHASED FROM MANUFACTURER IN ELKHART, INDIANA
- POOR QUALITY MATERIALS
- DOCUMENTS WHICH MISREPRESENT VALUE
- FAIL TO REGISTER — STILL TITLED TO MANUFACTURER SO IT CAN BE SOLD AS "NEW"

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LANDSCAPING SCAMS
(AMERICAN GYPSY, TRAVELERS)

- OFFER TO PRUNE TREES
- CHARGE PER LIMB, NOT PER TREE AS INITIALLY IMPLIED
- CUTTINGS "BALLED" WITH SOIL, QUICKLY SOLD AS SEEDLINGS

OTHER "TRANSIENT GROUPS" AND THEIR FRAUDS

THERE ARE OTHER "TRANSIENT CRIMINALS" WHO DO NOT FIT INTO THE AFOREMENTIONED MAJOR "TRANSIENT GROUPS". THESE CRIMINALS ARE MEMBERS OF SMALL GROUPS WHICH SPECIALIZE IN PARTICULAR TYPES OF CRIME. THE CRIME TYPE IS USUALLY THE ONLY LINKING FACTOR AMONG THE GROUP MEMBERS, WHO CAN BE OF EITHER SEX AND OF VARIED ETHNIC BACKGROUND. THE CRIMES COMMITTED ARE COMMONLY REFERRED TO AS CONFIDENCE SCAMS OR CON GAMES, AND GENERALLY REQUIRE SOME LEVEL OF PLANNING.

BANK EXAMINER SCAM

- TELEPHONE OR PERSONAL CONTACT MADE WITH VICTIM BY SUSPECT POSING AS "BANK OFFICIAL" OR "POLICE OFFICER"

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- VICTIM ASKED TO MAKE MONEY WITHDRAWAL FROM BANK FOR PURPOSE OF CATCHING A DISHONEST BANK EMPLOYEE

- THE WITHDRAWN MONEY IS TURNED OVER TO THE FAKE "BANK OFFICIAL" OR "POLICE OFFICER" AS SUPPOSED EVIDENCE

HANDKERCHIEF SWITCH

- VICTIM APPROACH BY FIRST SUSPECT WHO IS ACTING LIKE A "FOOL" OR FOREIGNER WITH A LARGE SUM OF MONEY

- SECOND SUSPECT ARRIVES AND VICTIM IS PERSUADED TO MAKE A BANK ACCOUNT WITHDRAWAL TO SHOW FIRST SUSPECT HOW BANKS WORK

- ALL MONEY IS PLACED IN A HANDKERCHIEF OR BAG, BUT A SWITCH OCCURS BEFORE VICTIM IS ALLOWED TO TAKE CONTROL "FOR SAFE KEEPING"

- VICTIM LATER FINDS CUT UP NEWSPAPER IN THE HANDKERCHIEF OR BAG

PIGEON DROP SCAM

- VICTIM IS BEFRIENDED BY ONE SUSPECT

- SECOND SUSPECT ARRIVES CLAIMING TO HAVE FOUND MONEY

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- PLAN MADE TO SPLIT MONEY AFTER EVERYONE PRODUCES SOME OF THEIR OWN MONEY, SHOWING "GOOD FAITH"

- ALL "GOOD FAITH" MONEY IS PLACED INTO AN ENVELOPE AND SUPPOSEDLY TAKEN TO A "BOSS" OR "LAWYER" IN A NEARBY OFFICE

- VICTIM IS UNABLE TO LOCATED THE "BOSS" OR "LAWYER"

BADGE COME BACK SCAM

- CAN BE USED AFTER ANY CRIMINAL ACTIVITY, BUT PRIMARILY SEEN AFTER THE HANDKERCHIEF SWITCH AND PIGEON DROP

- VICTIM OF PREVIOUS CRIME IS APPROACHED BY SUSPECT POSING AS A "POLICE OFFICER"

- VICTIM IS CONVINCED THAT THE "POLICE" ARE AWARE THAT THERE WAS A CRIME, AND THAT IT IS BEING INVESTIGATED

- VICTIM IS PERSUADED TO MAKE MULTIBILE BANK ACCOUNT WITHDRAWALS TO ASSIST IN THE "INVESTIGATION"

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CONTRACTOR REGISTRATION PROGRAM

I. *HISTORY*

The need for a contractor registration process/disaster relief program first made itself apparent following the tornado that struck the city of Xenia is the mid-1970's. Out-of-state and itinerate home improvement contractors flooded the area preying on consumers that were still in a state of shock. Literally hundreds of contractors received up-front moneys for clean-up and repairs and then disappeared without performing the agreed work.

From an enforcement standpoint, attempting to locate the culprits was a nightmare. With no paperwork generated by the transactions, we were often left with only general physical descriptions of the contractors, or, in one case, "I think he was driving a white pickup truck." Needless to say, we were not very successful in pursuing resolutions to the hundreds of consumer complaints that were filed.

When the tornado hit the village of Cardington in the late 1970's the attorney general's office proposed the first contractor registration program to be implemented in Ohio.

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After the village fathers had issued a resolution requiring contractors to register, the Consumer Protection Section administered the registration process on behalf of the local government. Localized damage, the small size of the community, and brief national media exposure may have been contributing factors, but the result was very few rip-offs. Those complaints that did result were more readily handled due to our ability to identify the contractors involved.

In the late spring of 1985, a series of tornadoes struck a heavily populated area of northeastern Ohio and Pennsylvania. The cities of Niles and Newton Falls, as well as the unincorporated area of Liberty Township sustained millions of dollars worth of damage. Thousand of individual consumers were effected. The national media ran with the story and within days hundreds of contractors from as far away as Texas and Mississippi had poured into the area.

The attorney general sent his investigators to propose and assist in implementing the registration procedure. The local officials, already aware of the need, met our proposal with open arms. Three separate registration centers were established within the 30 mile area and registration was started within 24 hours of our arrival.

In the ensuing two week period over 600 contractors were registered. It has been estimated that at least that many more fled the area into Pennsylvania after learning of the mandate to be registered.

The Consumer Protection Section received only two consumer complaints in the months following the disaster.

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One of the complainants sued the contractor and won a judgment for damages in the amount of $12,000.00.

During the tornadoes in Southwestern Ohio (Harrison and Fairfield) and the flood in Shadyside investigators from the Consumer Protection Section were on the scene within hours and stayed until local officials were able to assume control of the registration process, a total of almost 30 days in the field. Consumer protection personnel continued to provide assistance with the verification process for weeks after departing the areas. Recent tornadoes in Montgomery City and Blue Ash prompted activation of a registration team. The team registered over 500 contractors in five days. Our attempts to register contractors in the aftermath of disasters have been tremendously successful.

II. *PURPOSE AND GOALS*

Our primary purpose is to assist local government and its citizens in what could be their most difficult and demanding hour. We offer our expertise, manpower, and resources in an attempt to protect the consumer from potential damage and free local officials to tend to other matters.

Another first priority goal is to better educate the consumer so that they may be better able to protect themselves. This is accomplished by way of peppering the effected area with flyers that outline consumer tips to be used when contracting for repairs, saturating the area with media announcements, and making Consumer Protection personnel available to the consumer at locations throughout the area.

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Another goal is to make it inconvenient for the transient contractor to stay in the area. When he learns that he must register and wait for the verification to be completed it is our hope that the unscrupulous contractor will decide that it is not worth his time or effort to stay.

If he does stay in the area, the registration will, hopefully, provide sufficient information so as to be able to locate the contractor in the event of a problem.

III. *REQUIREMENTS*

The Attorney General does not have the authority to order contractor registration, that power lies with local government.

In a situation where the disaster strikes a city we suggest that building codes already on the books be amended to require registration prior to work beginning. We also suggest a criminal penalty for non-compliance, this will allow local law enforcement to remove the non-compliant contractor off the job and into custody. In villages or unincorporated areas of the county we recommend that the commissioners pass an emergency resolution requiring that contractors register. In any case we brief local law enforcement on the use of the Home Solicitation Sales Act, Ohio Revised Code 1345.21, to enable arrest on a misdemeanor charge.

The Home Solicitation Sales Act (ORC 1345.21) specifies that if the supplier approaches the consumer and contracts for work at a price greater than $25.00 there must be a completed contract and a verbal and written three day right to cancel. Work cannot begin in the three days unless

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the consumer provides a written, dated statement specifying the emergency and expressly waiving his right to cancel. Violation of this section is a minor misdemeanor.

IV. *WHAT WE DO*

At the request/mandate of local government we will administer the registration procedure. We will provide the manpower, forms, and resources needed to *verify* the information presented by the contractor. We will *not* approve or disapprove of any contractor.

For example, if a contractor discloses that he is from out of state, has been found guilty of larceny by trick, and refuses to provide any other information, then, if his assertions are true, we would consider his registration verified.

Once the contractor has submitted his Business Registration Form we will transport the information to Columbus and, when and if verified, return it to the disaster area. At this point the local officials can use the information to decide whether or not to issue permits, and consumers are urged to review the information before hiring the contractor.

Unfortunately, natural disasters provide an excellent opportunity for consumer fraud gimmicks. It is impossible to list all the scams that might be developed. However, following are some typical SCAMS that might follow a disaster:

*TELEPHONE SALES OF "DISASTER RELIEF KITS"

*FICTITIOUS FUNDRAISING FOR DISASTER VICTIMS

*PRIZE PROMOTION SCHEMES WHERE FUNDS WILL SUPPOSEDLY GO TO VICTIMS

*PEOPLE FALSELY CLAIMING THEY CAN HELP PROCESS DISASTER RELIEF-FOR A FEE

*ADVANCE FEE LOANS FOR THOSE IN NEED OF MONEY TO BEGIN REPAIRS ON HOMES

*DOOR-TO-DOOR HOME REPAIR SCAMS

*PHONEY INSPECTORS TYPICALLY REALLY SELLING SOMETHING SUCH AS WATER FILTERING SYSTEMS

*JOB SCAMS - CHARGING FOR INFORMATION ON NONEXISTENT CLEANUP OR REPAIR JOBS

HOW ARE SCAM ARTISTS GOING TO CONTACT YOU?

DOOR-TO-DOOR

NEWSPAPER ADVERTISING

TELEPHONE

IF YOU SUSPECT THAT YOU HAVE BEEN CONTACTED BY ONE OF THESE SCAM ARTISTS CONTACT THE OHIO ATTORNEY GENERAL'S OFFICE IMMEDIATELY.

800-282-0515

OR

614-466-8831

TODAY YOU ARE THE VICTIM

OF A DISASTER-

DON'T BE THE VICTIM

OF A $CAM TOMORROW!!

FOR MORE INFORMATION
CONTACT THE OHIO
ATTORNEY GENERAL'S REPRESENTATIVE
IN THE NEAREST
DISASTER RECOVERY CENTER

OR CALL

1-800-282-0515

HOW TO AVOID TELEMARKETING FRAUD

If a salesperson calls and requires that you pay money to win or be eligible to win a prize, it **is a scam.** Telemarketers are violating Ohio law when they contact you and state that you have won or will win a prize (or a sum of money) *if* you pay them money . Telemarketers often characterize the fee as gift tax, or a processing, contest, or shipping and handling fee. Regardless of how the fee is characterized, **it is illegal for you to be required to pay to win or be eligible to win a prize.**

To protect yourself, please remember:

- $ ***Do not*** give checking or savings account information to anyone over the phone.
- $ ***Do not*** give credit card numbers over the phone unless you know the organization is reputable.
- $ ***Do not*** assume an organization is legitimate because of impressive looking brochures, testimonials, or official sounding names.
- $ ***Be wary*** of high pressure sales tactics such as prizes, awards and deals that are only available if you "act right away."
- $ ***Request*** written information from any organization soliciting you over the phone and have someone you trust review it before you act.

If in doubt, hang up the phone! Don't worry about being polite to those seeking to tie up your time and steal your life savings.

If you have any questions about a telemarketing organization, contact our toll-free hotline at

1-800-282-0515.

Attorney General
Betty D. Montgomery

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Washington, DC 20036

To remove your name from their direct mail list write:

Direct Marketing Association
Mail Preference Service
P.O. Box 9008
Farmingdale, NY 11735-9008

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296a-311a

APPENDIX I(11) — DEFENDANTS' EXHIBIT 40 (STATISTICAL STUDY PREPARED FOR OHIO ASSISTANT ATTORNEY GENERAL HELEN MAC MURRAY DATED JULY 14, 1999)

[Pages 296a-311a submitted as a Lodging]

APPENDIX J — EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF ROBERT CIRANKO DATED JULY 27, 1999

[commencing at page 17]

* * *

Q. Mr. Ciranko, I would like to now turn your attention to the Watchtower Bible and Tract Society. Could you please explain to the Court how that functions?

A. The Watchtower Bible and Tract Society is strictly a legal entity. It was formed for the purpose of holding title to property and being able to publish literature, things that the laws of the country required.

The Watchtower Bible and Tract Society, just as its name indicates, it publishes the Watchtower magazine, the main journal of Jehovah's Witnesses, it publishes Bibles as well as tracts and other publications that are used for Bible education the world over.

The Watchtower Society also organizes conventions for Jehovah's Witnesses. It also has a hand in the building of kingdom halls, our places of worship, and it cares for other matters that relate to the needs of the [18] congregations.

Q. How does the Watchtower Bible and Tract Society, sir, disseminate the information it publishes?

A. The materials that we publish are distributed through the congregations by Jehovah's Witnesses, and I should say that all of Jehovah's Witnesses participate in this work.

Q. When you say all of Jehovah's Witnesses participate in this work, could you explain to the Court what you mean?

A. Every one of Jehovah's Witnesses who is a baptized member is considered a minister, and it is his privilege and his responsibility to preach the gospel of Christ. If I may have a Bible, I would cite a reference that gives us our commission to do so.

MR. POLIDORO: May I approach and take one of the exhibits?

THE COURT: Hand it to the deputy clerk if you would please.

MR. POLIDORO: The black one, please.

Thank you, judge.

THE WITNESS: Thank you.

BY MR. POLIDORO:

Q. Mr. Ciranko, there is an exhibit number on the front of that Bible. Could you read it into the record please?

A. I can't read it. 6C.

Q. Give me one second, Mr. Ciranko. That's correct, [19] sir.

A. The scripture that I would like to read is Matthew chapter 28, verses 19 and 20, which we take as our commission to

preach. Here Jesus told his followers, and this was shortly before his ascension to heaven, he told them, "Go therefore and make disciples of people of all the nations, baptizing them in the name of the Father and of the Son and of the holy spirit, teaching them to observe all the things I have commanded you."

Now the gospel record is clear as to how that was supposed to be accomplished. Jesus —

THE COURT: What was the cite on that again?

THE WITNESS: Matthew chapter 28, verses 19 and 20.

When Jesus was on earth, he established the pattern as to how that work was to be accomplished. In Matthew chapter 10, it tells us of how Christ chose his twelve apostles and then gave them instructions to perform ministry. In Matthew 10, verse 11, he told them, "Into whatever city or village you enter, search out who in it is deserving, and stay there until you leave. When you are entering into the house, greet the household; and if the house is deserving, let the peace you wish it come upon it."

So Jesus, by example, instituted a house-to-house [20] search for people so as to preach the good news to them. And that's the activity that Jehovah's Witnesses engage in, even as Christ's apostles did after his resurrection to heaven.

If I may have one more reference.

BY MR. POLIDORO:

Q. Please, sir.

A. In Acts, the 20th chapter, verse 20, the Apostle Paul states, "I did not hold back from telling you any of the things that were profitable nor from teaching you publicly and from house to house." That's Acts 20, verse 20.

So we endeavor to follow that pattern.

Q. When you say you endeavor to follow that pattern, what does that mean?

A. Jehovah's Witnesses I think are very well known worldwide because of our house-to-house work. That's how we carry the good news to the people, from house to house.

Q. In your opinion, sir, are there any ample alternatives to the house-to-house ministry?

A. No, we do not feel there is. We feel that we must be on the grass roots level. We feel our message is so important to life that we dare not miss anyone with it, and the only way to find everyone is to go from house to house. Plus that gives the advantage for the householder to be able to see us, meet us, get to know us, see what kind of [21] people we are, and for us to be able to speak with them face to face.

Q. Mr. Ciranko, what is the cost for the Bible-based literature that is left with a householder?

A. There is no charge for our literature. We leave all of our literature free of charge.

Q. How is this work financed?

A. It is funded by Jehovah's Witnesses themselves, by our own members. Our organization is unique in that we do not tithe. We do not pass a collection plate. We do not impose duns or dues upon our members. We do not send out letters of solicitation. We do not solicit for money from house to house.

We have contribution boxes set up at our kingdom halls, and anyone who wishes can put a donation there. No one knows what each one is donating; and if one cannot afford to donate, that's fine. It's done as a free will offering.

Q. What provision would there then be for a householder, someone who is met in the public ministry, to donate to this work?

A. Well, if an individual has an interest in doing that, we feel that it's appropriate to advise them that they can certainly make a donation to Jehovah's Witnesses for our worldwide work. However, that's not the purpose in going [22] from house to house. Our purpose in going from house to house is to talk about the Bible, to offer a study of the Bible with people. Money is the least of our interests.

Q. What then is the cost for the home Bible study?

A. That is free as well. Our entire organization is of a charitable, nonprofit, tax-exempt nature.

Appendix J

Q. Could you explain to the Court how the local congregations function, Mr. Ciranko?

A. The local congregation is patterned after what we read in the scriptures. The Bible tells us that Jesus Christ is the head of the congregation. So religiously Jehovah's Witnesses are organized in a theocratic fashion, theocratic meaning ruled by the theos, God. We feel our organization is ruled by God. That's where we receive our authority to preach, for instance. In the text that I read from Matthew 28, verse 19 and 20, in the verse just before that, verse 18, Jesus said, "All authority has been given me in heaven and on the earth," and then in his next breath he said go therefore and preach.

In the congregation we have what's called the body of elders, all of the spiritually qualified men in the congregation who meet the scripture outlined in the Bible for that office are appointed as elders. The elders take the lead in the ministry. They teach the congregation from the platform, and they help the members with their personal [23] problems as well.

Q. You are using the expression "take the lead in the ministry." What do you mean?

A. Actually going from house to house. Also the congregation will meet on a regular basis. We conduct what is known as a meeting for field service where an elder will instruct the group for that period of activity, give some suggestions of things they might talk about when they find people at home and help to organize the work for that period.

Appendix J

Q. How is the preaching work organized within a particular community? How does that function?

A. Every congregation has an assignment of territory, it could be an entire county, parts of counties, and they have definite boundaries assigned to them as to what area of that locality they are to preach in.

Then once they have those boundaries, then locally an individual in a congregation, one of the elders or one of the ministerial servants or deacons, if you will, has a responsibility to take the entire territory and divide it into small workable areas and provide a map for that piece of territory. It's actually produced as a map card to be given to the individual members of the congregation who will go out into that neighborhood to preach.

MR. POLIDORO: Judge, we have previously marked as [24] an exhibit Plaintiff's 4, the Wellsville congregation, and it's a photocopy of a card. Mr. Cantor? If I might, judge, may I submit —

THE COURT: You may.

BY MR. POLIDORO:

Q. Mr. Ciranko, if I may show you what's been previously marked as Plaintiff's Exhibit No. 4, could you describe to the Court what that is?

A. It says territory map card, the locality of Stratton, Empire City, and it has shaded in green the area that is to be worked

along Highway 7, and there's a note on the card that says, "Do not pass the railroad tracks in Empire."

Q. Now in your experience, sir, how often would a particular territory, reflected by that territory card, be worked over the course of a year?

A. That varies quite a bit from congregation to congregation, depending on how many members there are and how large their territory is. As a general rule, I would say in this country that if we could cover all of our territory once a year, we would be very happy with that.

Q. Is there a provision congregationally with respect to respecting the wishes of a householder who does not want to receive any further house-to-house calls by Jehovah's Witnesses?

A. Yes, sir. It's commonly referred to as the [25] do-not-call arrangement. If I am going from house to house and I meet an individual who is adamant that they do not want Jehovah's Witnesses to call on them any longer, I will endeavor to get their name, and I will certainly write that down as well as their address; and I will turn that in at the kingdom hall to the elder who is in charge of the territory. He will write up a note of that, put it inside the map card so that the next person who is assigned to work this territory will know not to call there, and those wishes are respected.

Q. Is there any provision to update that do-not-call information?

A. Yes, at the discretion of the elders, when they feel it's appropriate, no more often than once a year, perhaps quite a bit less than that, an elder will go back to that individual for two reasons: Number one, to make sure the same person is still living there because people tend to move; and number two, to make sure it is still their adamant wish. If it is, he will not pursue the matter, will not try to preach to the person, will just take the information, update the records.

Q. Thank you, sir. Could you explain to the Court what the governing body is?

A. As I mentioned earlier, we feel our organization is theocratic in structure, God ruled, Christ being the head [26] of the congregation. In the first century Jesus told his followers that he was going to delegate some of his authority to what he termed the faithful and discrete slave, anointed disciples of his on earth. In the first century a number of men, primarily the apostles, were selected from that group to take the lead and to represent the entire group, and they served as a governing body then.

To this day we still have a governing body of anointed Christian men who oversee the work of Jehovah's Witnesses worldwide.

Q. Now, Mr. Ciranko, you referred to the Bible; and on the desk in front of you, what has been previously marked as exhibits, The Knowledge book, The Greatest Man book, another copies of the Bible, do you recognize that literature?

A. Yes, I do.

Q. What do you recognize it to be, sir?

A. Well, we have two other translations of the Bible there, and we have other publications that are used to study the Bible with people or to address the needs of young people or to better familiarize people with the life and ministry of Jesus Christ. Each one has a different purpose.

Q. Are those books that would be disseminated in the door-to-door activity of the individual members of the [27] congregation?

A. Yes, they are published by the Watchtower Society and distributed through the congregation members.

Q. Could you please explain to the Court what objection the Watchtower Bible and Tract Society has to obtaining a permit to engage in a public ministry?

A. As I referred to earlier, the Matthew chapter 28, verse 18, Jesus said all authority was given him in heaven and on earth, and so we feel that's all the authority or permission we need to preach. For us to seek a permit from a municipality to preach we feel would almost be an insult to God. We do not feel we need to do that.

As far as legal permission is concerned, that's been well established for us in the United States Constitution.

MR. CANTOR: Objection, Your Honor.

THE COURT: Sustained. You can't offer opinion testimony on the law.

BY MR. POLIDORO:

Q. Any other reason, sir?

A. As far as obtaining a permit is concerned.

Q. Right.

A. We feel it is restrictive —

Q. How so?

A. Well, in the ordinance in question here, for [28] instance, it restricts the hours of day when we can call from house to house. We feel it would be difficult to find some people at home during those hours.

Also it would require or permit the municipality to actually compile a list of the names and addresses of all the members of our congregation in Wellsville which we do not feel is appropriate for a minority religion.

MR. POLIDORO: Mr. Ciranko, thank you. I have no further questions. Thank you, judge.

THE COURT: Thank you, counsel.

Mr. Cantor, you may cross-examine.

MR. CANTOR: Thank you, Your Honor.

Appendix J

CROSS-EXAMINATION

BY MR. CANTOR:

Q. Good morning, Mr. Ciranko.

A. Good morning.

Q. You've indicated to us that you're familiar with the activities of Watchtower, is that correct?

A. Yes.

Q. Now the activities of Watchtower, have they been consistent in terms of the work that they do within the State of Ohio for the last 75, 80 years?

A. Are you referring to our house-to-house ministry, for example?

[29] Q. I am referring to the distribution of books, the ministry, the sending of literature to direct congregations, the building of kingdom halls, things of that nature?

A. We have been consistent in how we have conducted our ministry, yes.

Q. So it would be fair to say that you're not doing anything new today that you weren't doing 75 years ago. A fair statement?

A. Yes, it is.

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Q. Now you have made some reference to Our Kingdom Ministry, and you have a particular role with regard to that publication?

A. I help to edit it.

Q. And how many other folks help you edit?

A. I cannot tell you exactly how many, but there are several. It begins with a group of men who compile the articles for Our Kingdom Ministry. Those are assigned to a variety of writers. It's compiled and edited, proofread and published.

* * *

* * *

[34] * * *

Q. Now, sir, as we are talking, isn't it true that Jehovah's Witnesses are instructed to disregard no trespassing signs?

A. No, that's not true.

Q. Isn't it true that Jehovah's Witnesses are instructed to disregard no solicitation signs?

A. We do not feel that no solicitation signs apply to us since we are not solicitors.

Q. So if you say they don't apply to you, that would mean that a person who placed a sign that said no solicitation or no trespass, since it didn't apply to you, would have no effect upon a Jehovah's Witness who would be canvassing door to door, correct?

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A. It would —

THE COURT: Let me interrupt you, counsel. As I understand the briefing in this case, that issue is not before the Court. As I understand the plaintiff's position, that's not a challenged part of the ordinance; is that correct? Who would like to address that?

MR. POLIDORO: Yes. If I can, judge. In concept with respect to the no solicitation ordinance posting the sign, we have no problem. The only difficulty we have is with respect to the definition of solicitation which would impact not only on obtaining the permit, but whether that [35] section would apply to Jehovah's Witnesses.

THE COURT: Your reply memorandum was quite explicit indicating there was no challenge to that portion of the ordinance that would require any person going door to door to observe the no solicitation signs. I raise that only because I think that issue is off the table.

MR. CANTOR: Your Honor, we believe that it is pertinent because it deals with the community need with regard to privacy and the community need with regard to law enforcement.

THE COURT: All right. It will be admitted for that limited purpose then. You may rephrase the question, if you would.

MR. CANTOR: Thank you.

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BY MR. CANTOR:

Q. It's fair to say that Jehovah's Witnesses disregard the no solicitation signs placed on homes on the basis that they are instructed that such signage does not apply to them, correct?

A. That's right.

Q. Same question with regard to no trespassing signs. Same answer, sir?

A. No.

Q. Different answer?

A. Yes.

[36] Q. What is that answer?

A. We will respect no trespassing signs.

Q. Now the recommendation from the national organization to the local congregation is that each territory be considered and reviewed annually, correct?

A. What do you mean by reviewed?

Q. Well, the canvassing that goes on, that should be done on an annual basis. That's the goal of the local congregation, correct?

A. The goal of the congregation is to continually work its territory, however long that takes.

Q. But that canvassing, you believe it's aspirational to conclude it in one year, correct?

A. We would be pleased with that, yes.

Q. What do you mean by the word "canvass"?

A. We don't use the word "canvass." You used the word "canvass."

Q. I appreciate that, but you apparently understood the term when I used it with you, didn't you?

A. Well —

Q. First let's answer that question, and then I will ask another one. Did you understand the term when I used it with you?

A. I don't know how you mean it, no.

Q. Well, what does the word "canvass" mean to you?

[37] A. In my mind to canvass would mean to go from house to house perhaps to solicit members or solicit money from people, perhaps take a survey.

Q. Excuse me. I didn't mean to interrupt you. Anything else, sir?

A. No.

Q. Would it be fair to say in your mind it has got that same old dictionary definition? If you went to the dictionary, that's what it would mean to you?

A. That would be my only resource to define it.

Q. But you wouldn't need the dictionary because you have an understanding of the term as we sit here today?

A. Yes.

Q. Same thing with regard to the word "solicitation." Are you familiar with that term?

A. Yes.

Q. What is your understanding of that term?

A. That with solicitation usually is associated the desire to obtain money, perhaps because of selling a product or a membership in something.

Q. Would solicitation also include donations in your mind?

A. No, it does not.

Q. What term in your mind would consider the concept of donation? In a house-to-house search for that donation?

[38] A. I don't know that there is any.

Q. Okay. Now you have indicated to us a long history of being involved with church activities. It's fair to say, however,

that none of your oversight responsibilities ever included the State of Ohio; is that correct?

A. That's correct.

Q. When we had our general discussion about how the Watchtower works with regard to the local congregations, you identified the construction of kingdom halls. Are you familiar with that area?

A. Yes.

Q. Would you explain to us how Watchtower is related to that issue?

A. Watchtower has designated regional building committees throughout the country, and these are groups of elders from various congregations who, in addition to their responsibilities, will assist congregations who are desirous of building a kingdom hall or remodeling a kingdom hall.

* * *

[41] Q. Would you explain for the Court what the worldwide work is?

A. This has to do with, for instance, the publishing of our literature which is distributed throughout the earth. It is also used to support missionaries that we have in many different lands. Currently Watchtower Society supports over 2,000 missionaries in the four corners of the earth. So the money is used for that as well.

Q. Now the publication aspect of the funding includes the cost of the publication for the publication of Watchtower? Excuse me. Watchtower is a publication, correct?

A. Yes, it's a magazine.

Q. And there's another publication called?

A. Awake!

Q. And we've got a third piece of communication that goes to the congregation called The Kingdom's Ministry?

A. Our Kingdom Ministry.

Q. Any other publications that it funds?

A. Well, everything that the Watchtower Society has published over the years. We have quite an array of books and brochures, tracts, as well as Bible translations.

Q. So when this money comes in from a local congregation, whether it is in Ohio, New York or Florida, it is spent the way Watchtower feels is appropriate at its [42] national headquarters?

A. Correct.

Q. You've indicated to us that the ministerial aspect of the faith is basically grass roots. Fair?

A. Yes.

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Q. And that upon someone being baptized, that individual has the right, indeed the responsibility, of going door to door?

A. Yes.

Q. So every member in a congregation has that obligation?

A. That's right.

Q. And the determination of how frequently someone goes door to door is determined by the local congregation?

A. Are you asking how frequently the individual will go from house to house, or how frequently a neighborhood would be worked?

Q. Neighborhood would be worked?

A. The elders would determine that.

Q. With regard to a specific home, however, would that be up to the individual who is a new Jehovah's Witnesses at that minister level determination, or would that be somebody else?

A. Well, an individual has a neighborhood to work, and he would endeavor to call on every home and make contact.

[43] Q. You're not suggesting to the Court that the only place that your ministry can take place is at a home, are you?

A. No, not at all.

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Q. It's fair to say that you could conduct your ministry at the front of a grocery store?

A. Yes.

Q. At a tavern?

A. Yes.

Q. At a truck stop?

A. Yes.

Q. At a restaurant?

A. Yes.

Q. At a park?

A. Correct.

Q. At a playground?

A. That's right.

Q. At a post office?

A. Yes.

Q. On a street?

A. Yes.

Q. Any public area?

A. That's right.

Q. At a power plant?

A. Perhaps.

[44] Q. Any mutually agreeable location, correct?

A. That's right.

Q. Now my understanding, and I think you were clear, isn't it true that the Jehovah's Witness does not wish to preach to those who do not wish to receive the word? Correct?

A. If people do not want to listen to us, we are not going to force our religion upon them or our teachings, no.

Q. So when information is given to the Jehovah's Witness that an individual, a householder, does not wish to receive the word, there is no knocking on the door, correct?

A. That's correct, yes.

Q. The Village of Stratton has a listing of residences who do not wish to receive the word. Are you aware of that?

A. I heard that in your opening statement this morning.

Q. Do you have any information to the contrary?

A. No.

Q. Is there anything about a list that was kept current to identify those who would not wish to receive the word that poses a problem in your faith for the Jehovah's Witness?

A. It could, depending on who compiles the list.

Q. Well, if it's the individual, the householder, who writes out, make his wishes known, you don't have a problem [45] with that, do you?

A. It depends on at whose request the householder does it.

Q. He does it at his own volition.

A. Well, is this because the municipality has questioned or surveyed the residents and asked them if they want Jehovah's Witnesses to call, or is it because in a conversation with one of Jehovah's Witnesses the householder said, I don't want you to come back. I think there's a difference there.

Q. The difference in the statement that you have just made is that — your statement, there has been an intrusion to the householder by the Jehovah's Witness who has indicated that he did not want to see the Jehovah's Witness, correct?

A. If that's the case, then we will honor that wish of theirs.

Q. But you still intrude upon his privacy periodically to make sure that he is of the same mind, correct?

A. We will endeavor to make sure the person still lives there and still has that as their wish, yes.

Q. Well, if the listing remains the same, the individual has a piece of paper that says, I don't want to see you, and it remains the same, what purpose would it be beyond that for you to know that he no longer wishes to see you?

[46] A. Things change, people move, their circumstances change, their attitudes change.

Q. I understand that, but the attitude that is identified on a piece of paper is kept at a central location. Do you understand that?

A. Yes, and we date our records. If that slip is a year or two or three years old, how can we be certain that still is the wish of the person or that the person even still lives there?

Q. Well, the records that you are looking at are your internal records, correct?

A. Yes.

Q. You're not suggesting to us that every time that someone says to a Jehovah's Witness, I don't want to hear your message, that every time that that occurs, you get the actual name and the actual address of the individual, are you?

A. If they are adamant they do not want us to return to their home, yes. That was the arrangement I explained.

Q. Who determines whether someone is adamant?

A. Well, I think the householder would make that attitude very evident to our member.

Q. Would the householder be able to do that on a writing and still be effective in your eyes?

A. Yes, if the individual wrote to our congregation and [47] said, do not call at our home again, we would honor that.

Q. The decision to suggest that a donation be made during the course of the visit by a Jehovah's Witness is discretionary with the person making the call on behalf of the Jehovah's Witnesses, is that true?

A. It's not really a suggestion that the person donate. It's information that if the person wishes to donate, they may do so. That would be discretionary depending on the individual who's calling.

Q. So the individual minister, that person who has been baptized, who goes door to door, makes that decision during the course of the communication with the householder, correct?

A. Correct.

Q. Sometimes he does; sometimes he doesn't.

A. I would say most of the time he does not.

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Q. Sometimes he does; sometimes he doesn't?

A. Yes.

Q. Thank you.

MR. CANTOR: One moment, please, Your Honor.

THE COURT: You may.

BY MR. CANTOR:

Q. Mr. Ciranko, you are unaware of any attempt by the Wellsville congregation or any congregation to register with the Village of Stratton since the passage of the [48] ordinance that is presently under attack, is that correct?

A. Yes.

THE COURT: Let me clarify that answer. You are unaware of any attempt, or they have not? Which of the two would be correct?

THE WITNESS: I don't believe they have.

MR. CANTOR: I apologize for the poorly phrased question.

No further questions of this witness at this time.

THE COURT: Thank you, counsel. Redirect?

MR. POLIDORO: Very briefly if I might.

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REDIRECT EXAMINATION

BY MR. POLIDORO:

Q. Mr. Ciranko, are the activities of Jehovah's Witnesses in Ohio different than the activities of Jehovah's Witnesses in the states over which you have oversight?

A. No, they are not.

Q. And with respect to the follow-up calls on a do-not-call arrangement, could you explain to the Court how that follow-up call would work?

A. Generally an elder would assign to another elder, or each of the elders perhaps, those calls to follow up and see what the situation is there.

[49] Q. And what would the householder be asked?

A. If I can tell you how I've done it myself.

Q. Please.

A. In fact just a few months ago in our congregation in Connecticut our elders were asked to make these follow-up calls, and I was given a list of six that were four years old. So no contact had been made in four years. One I was never able to find at home. In the other cases I identified myself as being from the congregation, and that the reason we were calling is because we have on record their address as a place where Jehovah's Witnesses are not welcome to call in our

ministry, and I was just checking to see if that was still their wish. In two of the cases the householder said, no, that's not how we feel. You people are welcome any time you wish to call.

MR. CANTOR: Objection. Move to strike.

THE COURT: The objection will be sustained with respect to what the party actually said. But as far as the indication that the position had changed, that will not be stricken.

MR. CANTOR: Thank you.

THE COURT: You may proceed.

MR. POLIDORO: I thank you, Mr. Ciranko. I have no other questions. Thank you very much.

MR. CANTOR: Mr. Ciranko, thank you.

* * * *

APPENDIX K — EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF VERCIL KOONTZ DATED JULY 27, 1999

[commencing at page 52]

Q. Are you currently a member of the congregation in Wellsville?

A. Yes, I am a member of the Wellsville congregation of Jehovah's Witnesses.

Q. Approximately how many individuals are members of that congregation?

A. It varies, but perhaps around 65 to 70, in that area.

Q. And where is that congregation located, sir?

A. It's located on 14th Street in the Village of Wellsville.

Q. Do you serve a particular role in the Wellsville congregation of Jehovah's Witnesses?

A. Yes, I do. I am an elder. I belong to the body of elders that has oversight of the congregation and the responsibilities of helping others in the congregation.

Q. When you use the term "oversight of the congregation," could you please help the Court to understand, sir, what your role as an elder is within the Wellsville congregation?

A. Yes, I would be glad to. We just heard information to that effect. The role of an elder is to oversee the duties or the

responsibilities of different ones in the congregation. So the body of elders work in conjunction [53] with not only working in the ministry, but also in the congregation itself with other duties.

Our main objective is to share the good news of the kingdom and the ministry as we have already heard.

Q. When you say share the good news of the kingdom, are you talking about sharing ideas from the Bible?

A. Yes.

Q. Could you please describe the activities of the congregation with respect to the public ministry?

A. Yes. The congregation as a whole has the responsibility of sharing in the ministry, and they each receive a territory, as we have already mentioned, as they work in a ministry. So they will not overlap each other, they concentrate in a particular area of the territory.

When the territory is finished or completely worked, they will turn the territory back.

Q. Let's just discuss that for a moment please, Mr. Koontz. When you say territory, is there a geographical region that the Wellsville congregation has the oversight over with the respect to the preaching of the good news?

A. Yes, they do. It is not a real large area, but we do have the village of Wellsville, other nearby small areas, other small

villages such as Stratton, Empire, Irondale, Highlandtown, up to — there are just a few small areas that we cover plus the rural area around these villages.

[54] Q. What is the mechanism that the congregation uses in order to work through the different locales that are a part of that congregation's responsibility with respect to the public ministry?

A. Would you explain the word "mechanism" please?

Q. Sure. How does the congregation ensure that the City of Empire, for example, is not worked in field service week after week after week for a period of months?

A. Very good.

Q. Thank you.

A. Thank you. We do have a way of working the territory so that the territory will not be overworked because our territory in itself is fairly large in the sense we cover it usually, as we've already heard, about once a year, which is our goal as well to try to cover all the territory, and we usually do that. At times we might cover one territory more than the other, depending on the weather or the location of the territory.

Q. So an elder would pick a specific territory card out, work that and then return the card?

A. Yes.

Q. Is there a way that the congregation would work in an organized fashion through the different territories they have?

A. We would use the same method. Sometimes someone that [55] gets a territory from the territory servant will assign others in his group to work certain parts of that territory. So by doing this, all will have a share in the ministry.

Q. Thank you. Sir, I would like to show Plaintiff's Exhibit 4. Mr. Koontz, do you recognize that?

A. Yes, I do.

Q. And what do you recognize that to be, sir?

A. That's a territory card of Empire and Stratton, Ohio.

Q. Now when you were speaking about territory cards, the different geographic region of the congregation is broken up in different cards?

A. Yes.

Q. Do you know approximately how many cards there would be with respect to the — withdraw that.

Do you know approximately how many territory cards the congregation of Wellsville has responsibility for?

A. Yes, I would say between 70 and 80.

Q. What is the charge for home Bible studies, Mr. Koontz?

A. There is no charge.

Q. Why is that?

A. Well, the scripture is very plain saying we receive free and we give free. So there is no charge in the ministry work that we do for other people. . . .

[58] THE COURT: Again give us an approximation, 1970s, 1980s or 1990s?

THE WITNESS: Well, 20 years would be '79.

MR. CANTOR: Judge, so the record is correct, I believe the letter is dated 1980 as part of the exhibits.

THE COURT: The objection will be sustained as far as the 1980 conversation. I understand there is a more recent one. You may inquire with respect to that one.

BY MR. POLIDORO:

Q. Is there another incident that you were involved with, sir?

A. Yes, I was working the Village of Stratton, working door to door in the ministry, and I was talking to a lady at the door, having a fine conversation about the Bible, and I noticed she was preoccupied with something behind me, and I wasn't sure what it was, but I did finish my conversation; and then she mentioned, I think that gentleman across the street wants to talk to you.

And I turned around and walked directly across the street to him and asked him if there was a problem. He said, I want you to get your group, or something to that effect, I am not sure of the words he used, and get out of here. I says, well, you realize we do have a right to preach the ministry from door to door; and he said, I could care less about your rights. And so I got the group, and [59] we left the village.

Q. When you say —

MR. CANTOR: Your Honor, at this time we would object and move to strike. There is no time foundation. There is no representation that this has anything to do —

THE COURT: We need to know who made the representations and when they were made before I admit that testimony, counsel.

MR. POLIDORO: Thank you, judge.

BY MR. POLIDORO:

Q. Mr. Koontz, could you please tell the Court who you spoke to, who said those things to you?

A. All I know, he was a policeman in the village, and he was not in uniform, but he identified himself as a policeman.

Q. And the approximate time this incident took place, sir?

A. I would say it was probably eight to ten years ago, and I am not sure of that exactly.

Q. Now I would like to turn your attention, sir, to the last time that the congregation of Wellsville engaged in a public ministry in Stratton, which is approximately the spring of 1998. Prior to the members of the congregation going out in the public ministry, were they given any special instructions with respect to their activities in [60] Stratton?

A. Yes, I think so. They were admonished to conduct themselves properly, as they have always been, and then they were instructed not to ask for any contribution from the householder, and we thought perhaps this would be a better means of working in the ministry without hindrance from the village.

MR. POLIDORO: I thank you, sir.

I have no other questions, Your Honor.

THE COURT: Thank you, counsel.

Mr. Cantor, you may cross-examine.

MR. CANTOR: Thank you, Your Honor.

Does the witness have Defendant's Exhibit 3? It's the defendant's exhibit book. This was the plaintiff's exhibit book.

Appendix K

CROSS-EXAMINATION

BY MR. CANTOR:

Q. Good morning, Mr. Koontz.

A. Good morning.

Q. You are presently an elder with the Wellsville congregation?

A. That's true.

Q. And you have held that position for approximately how long?

[61] A. Since 1972.

Q. And around 1979, 1980, when you wrote the letter to Mr. Bruzzese —

A. Yes.

Q. — you were an elder at that time?

A. Yes, I was.

Q. And you retained copies of the correspondence received from Mr. Bruzzese?

A. I am sorry, but I don't recall if that was retained or kept or not. I didn't have knowledge of that. I do recall what was

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in the correspondence, but I do not have access to the information or the letter.

Q. Is there a special repository within the kingdom hall where records of this nature are kept?

A. Yes, there is.

Q. And during the course of this particular case, the Wellsville congregation was asked to retrieve the communication, and this was one of the documents that was retrieved; isn't that true?

A. Are you referring to the one that I am looking at here?

Q. Yes, sir.

A. It seems very accurate. I recall the information in it is what I recall.

Q. I appreciate your response, but my question is: Was [62] that document retrieved from your kingdom hall?

A. I'm not sure.

Q. Do you have any information as to where else the Wellsville congregation would have been able to retain that document for the last 19 years?

A. I would suggest that it did come from the files at our kingdom hall.

Q. That would be your best understanding of it?

A. Yes.

Q. You kept these type of records for — for what reason?

A. Because there seemed to be a problem, and I assumed that eventually this would have to be resolved some way.

Q. So you felt the document was important?

A. Yes, I did.

Q. Who is this Tammy Tuckosh?

A. Tammy Tuckosh is a pioneer minister in our congregation.

Q. And in 1998, just before this lawsuit was filed, she had a confrontation in the Village of Stratton to your knowledge?

A. Yes, I understand she did.

Q. When she came back from that meeting, you requested that she write down what happened during that confrontation?

[63] A. Yes, I do remember that.

Q. But you can't find that document today?

A. For some reason it's not available, and I have no idea why.

Q. But you can find, your congregation can find a 19-year-old document, correct?

A. Yes.

Q. Now with regard to Exhibit 4, that's the card that you have there, is that the actual card that the congregation uses?

A. Yes, it is.

Q. Where on the card is the location for the do not calls?

A. Usually the information is put on the back so that when an individual receives the card, they will be able to look at the card and see the information available to see who should not be called on.

Q. How many do not calls are there associated with the Village of Stratton?

A. I don't see any on this one.

Q. You became aware of the ordinance that was passed in the Village of Stratton, correct?

A. I —

Q. Have you read it?

A. I recently heard about the ordinance.

[64] Q. Did you read it?

A. No, I have not read it.

Q. Do you know the charge for the filing for the registration?

A. No, I'm not familiar with that.

Q. Do you know that it's free?

A. I'm not sure if I ever heard it was free. I just heard there was an ordinance.

Q. You have been successful in preaching at locations other than at an individual's home, haven't you?

A. Besides the door-to-door ministry you are talking about?

Q. Yes, sir.

A. Yes.

Q. If an individual made himself available to you on the street as opposed to his home, that would just be another form of talking to people and would not impact on your faith; isn't that true?

A. That's true.

Q. The Wellsville congregation does not deal with the doctrine of the church. It only deals with the administrative issues, is that correct?

A. It deals with doctrine as well as administrative. They do not make the doctrine, but they do follow through on the doctrine.

* * *

[67] Q. Part of your job at the congregation included making sure that there were enough publications to be given to those who were doing the door-to-door ministry, correct?

A. That's correct.

Q. And you would write for these publications to Watchtower, and they in turn would send it to you?

A. That's correct.

Q. Was there — There was no charge for that, was there?

A. No charge.

Q. The money was expended from the worldwide ministry, isn't that true?

A. That's true.

Q. You agree with the principle that if the organization indicates to you that someone doesn't want to be preached to, that you won't preach to them?

A. Yes, that's true.

Q. If someone wrote you a note to indicate that they did not want you to preach to them at their home, would you honor that note?

A. We would honor that.

Q. If you found that note on a bulletin board, would you honor that note?

A. On a bulletin board where?

Q. On a bulletin board at city hall?

A. I would rather hear from the individual himself, but [68] I am not sure if I would honor that. Some prank could have put it up there.

Q. No one has indicated to you during the 50 years that you have been associated with your faith that you are forbidden from making application or requesting a permit to continue preaching from door to door within a community, correct?

A. That's correct.

Q. You are aware of other members of your faith in different sections of the country that in fact do sign registration forms and do request permits, isn't that true?

A. No, I'm not familiar with that.

MR. CANTOR: Counsel, I refer you to page 32 of the deposition, top of the page.

BY MR. CANTOR:

Q. Mr. Koontz, this isn't the first time that you and I have met?

THE COURT: Do you have a copy to give to the witness?

MR. CANTOR: I believe I do.

MR. POLIDORO: What page was that, sir?

MR. CANTOR: I believe it's 32. Withdrawn, Your Honor.

Counsel, excuse me. I am going to refer you to page 34 of the deposition.

[69] BY MR. CANTOR:

Q. Sir, you have now been handed the deposition?

A. I am sorry, would you repeat that?

Q. Sure. You have now been handed your deposition?

A. Okay, thank you.

Q. Is that correct?

A. I guess it is.

Appendix K

Q. Would you look at the front cover and see whose name appears on there?

A. Yes.

Q. That is your deposition?

A. Yes.

Q. Would you review page 34 to yourself? Have you reviewed page 34?

A. Yes, I have.

Q. Do you see the question that begins, "And you're aware of other members of your faith in different sections of this country that in fact do sign listings that request permits to allow them to preach door to door, correct?" Do you recall that question?

A. Yes, I do.

Q. And do you recall your answer?

A. "I think I have heard that. I've heard that."

* * *

[71] (The witness affirmed.)

THE COURT: Counsel, you may proceed.

* * * *

APPENDIX L — EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF TAMMY TUCKOSH DATED JULY 27, 1999

[commencing at page 71]

* * *

TAMMY TUCKOSH

being first duly affirmed, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. POLIDORO:

Q. Good morning, Mrs. Tuckosh. Could you please state to the Court how you first became associated with Jehovah's Witnesses?

A. My parents being Jehovah's Witnesses, I was brought up in the organization and taught from a young child; and then when I became of age to do a lot of personal study myself at age 17 of March 23, 1985, I dedicated my life by baptism.

Q. Thereafter, did you have any other relationship with your local congregation?

A. Yes, I am considered a full-time minister.

Q. Would you please tell the Court what that is?

A. That is considered that I spend — I volunteer my time. Up to the beginning of this year, I spent 1,000 hours a year or 90 hours a month; and at the beginning of this year it changed to 70 hours a month and 840 for the year.

[72] Q. And when you say you spent 1,000 hours a month, what was your compensation for doing this?

A. A year.

Q. A year. That would have been a busy month. What was your compensation?

A. I volunteered my time, and I supported myself by part-time work; and now that I am married, my husband assists me in that, too.

Q. Could you describe to His Honor what you do with respect to your activity in the full-time ministry?

A. I spend my time in preaching and teaching ones from the Bible to help them understand the work that Jesus even set the example for us in doing.

Q. What does this preaching and teaching activity encompass? What do you actually do?

A. I go from door to door. I have even went into businesses and talked to ones. I have had personal Bible study with ones to help them understand what God requires of us.

Q. In the spring of 1998, what congregation were you a member of?

A. The Wellsville, Ohio.

Q. Were you a full-time minister at that time?

A. Yes, I was.

Q. In the spring of 1998 did you have the opportunity to [73] perform public ministry in the Village of Stratton?

A. Yes, I did.

Q. Would you explain to the Court what happen?

A. When we went in, we went in a group, I was with three others in our car group, and that morning for about two to two-and-a-half hours we did the preaching from door to door.

Q. Were you given any special instructions by the elders of the Wellsville congregation prior to performing the public ministry in Stratton in the spring of 1998?

A. That we was to go in to preach and do our work as normal, try to reach as many people as we can this morning, but we was also given the instructions not to ask for any donations at that time.

Q. When you say not to ask for any donations, what do you mean?

A. Well, usually we take the opportunity at the end of discussing a Bible thought, if one accepts information or we get to share a Bible thought, then we mention to them if they

would like to donate towards the worldwide work, that is up to them. They have the opportunity to express their appreciation.

Q. What if an individual does not want to make a donation but does want to read a piece of literature, what do you do?

[74] A. We still leave it with them.

Q. Did anyone show interest in the Bible-based message that you were delivering that morning?

A. Yes, they did.

Q. Approximately how many people?

A. I personally had about three to five.

Q. Did there come a time thereafter you returned to the Village of Stratton for the purpose of engaging in public ministry?

A. It was about two weeks after the first visit there.

Q. Could you please tell the Court what happened?

A. We went in to make return visits on ones that we had contacted prior, the ones that showed interest, whether in just the Bible message or even accepted the literature, so we can continue that information that we had shared with them.

Q. Now when you used the expression "return visit," can you help us understand what that means?

A. We apply that terminology to ones that expressed interest in the Bible teachings, also ones that we have left literature with, and even ones that have asked us to come back personally.

Q. Now these return visits that you made, these were the three to five individuals who showed interest on your prior visit?

[75] A. Correct.

Q. Did you find any of these three to five individuals at home?

A. Was that on the —

Q. The second time?

A. Yes, I found a few people at home. One in particular, I got a gentleman I had talked with, not his wife at the first visit, he himself wasn't interested, but he said I could come back and talk to his wife. If she was interested, she could tell me at that time.

Q. Thank you. Did you leave any literature with any of the individuals that you met on the second occasion?

A. That particular gentleman, no, of course I didn't. But other ones that I did come in contact with, yes, I did leave literature with them.

Q. Now on this second visit, did you mention the voluntary donation arrangement?

A. No, I did not.

Q. Did you mention the voluntary donation arrangement on the first visit?

A. No.

Q. So on neither visit did you solicit any money from the householders?

A. No, I did not.

Q. When did you next return to Stratton?

[76] A. Probably about a month on so after the second visit.

Q. What was your purpose for returning to Stratton at this time?

A. To talk to the same individuals that I had contacted on the initial visit to Stratton.

Q. People who had previously showed interest in the Bible-based message that you were returning to?

A. Correct.

Q. Did you find any of those individuals at home?

A. No, at that time I did not.

Q. What occurred on your leaving Stratton that day?

A. That was when I was confronted by a gentleman that had came out of a building. He hollered at the group that I was with to stop, and actually at that time we was leaving Stratton —

Q. Would you explain to the Court what you mean you were leaving Stratton? Physically what were you doing?

A. We very close to the stop sign to go out on Route 7.

Q. You were in a car?

A. Yes, and we were done visiting the ones that we had planned on doing that evening.

Q. And what happened with respect to this confrontation?

A. After he hollered at us to stop, of course we stopped because we didn't know exactly who he was. He approached the car, and he was very upset with us. He asked us what [77] we were doing there in the town. I explained to him that we was there sharing Bible thoughts with ones, and he told us that we were not allowed to be there in the village. Then he explained to me that he had been in contact with his attorney and also our attorney, and I said I was fully aware of that, but our attorney advised us that it was our right to go in and preach.

He at that point told me that the ones that had moved into Stratton had moved in there under the understanding that they would not be bothered by Jehovah's Witnesses. And even after that point he said that if we were men, he would

have taken us and put us in jail. And through this whole situation he was shaking and pointing his finger at us, and he was very upset.

At this point I said to him, well, who are you anyways? And he said Mayor John Abdalla; and at that point I wrote his name down, and then we left.

Q. Do you see him in court today?

A. Yes, I do.

Q. Would you point him out? Indicating the mayor?

A. Yes.

Q. Was there a time thereafter that you ever returned to the Village of Stratton for the purpose of engaging in the public ministry?

A. No, I did not.

* * *

[79] * * *

Q. At any time were you informed by Sheriff Abdalla that you needed any type of permit to conduct your preaching activity in Stratton?

A. No.

MR. POLIDORO: Judge, I have no other questions.

THE COURT: Thank you, counsel.

Mr. Cantor, you may cross-examine if you wish.

CROSS-EXAMINATION

BY MR. CANTOR:

Q. Mrs. Tuckosh, you have been a full-time minister as a Jehovah's Witness, and you have been preaching since the age of ten; is that correct?

A. I have been a publisher of the good news since I was 10, but as a full-time minister since the age of 17.

Q. The procedure in the Wellsville congregation during the time in which you were associated with them was that when someone did not want to hear preachings, that their name would be taken down and then placed in some type of document; and then approximately one year later an elder would review the information with the individual, correct?

A. Correct.

Q. In 1998 you were in Stratton on three separate [80] occasions, correct?

A. Correct.

Q. The first time was in the middle portion of the year, correct?

A. About springtime.

Q. You preached for about two, two-and-a-half hours, between the hours of 10:00 to 10:30, correct?

A. You mean starting at 10:00, 10:30?

Q. Yes, ma'am.

A. Yes.

Q. And that was on a Saturday?

A. Yes.

Q. Nothing unusual occurred on that occasion?

A. No.

Q. You went to 30 to 50 homes on that occasion?

A. Yes.

Q. The second time that you went to the Village of Stratton was about two weeks later?

A. Correct.

Q. At that time you restricted your activities to the three to five folks who indicated they had an interest in seeing you at that point?

A. Yes.

Q. Then we have — That trip was uneventful in the sense that you have had no contact with anyone from the [81] administration of the city or any representative of the city, correct?

A. You mean specifically with the Village of Stratton?

Q. Yes, ma'am, on that occasion.

A. Correct.

Q. Now we are going to talk about the third occasion. It's in the evening hours.

A. Yes.

Q. It's after six in the evening?

A. Yes.

Q. Mayor Abdalla is coming from what appeared to a restaurant or tavern, is that correct? You subsequently learned that was his place of employment, didn't you?

A. No.

Q. And then he spoke to you in a loud voice?

A. Yes.

Q. He was not profane?

A. No.

Q. Are you suggesting to us that he swore at you?

A. No.

Q. Okay. He just raised his voice?

A. Correct.

Q. Now this event that you're talking about occurred before the filing of this lawsuit, correct?

A. I assume so.

[82] Q. There is nothing in your faith as a Jehovah's Witness to prevent you from obtaining a permit to enable you to go door to door, correct?

A. Correct.

Q. Your sister is April Jackson?

A. Yes.

Q. She resides in the Cleveland area?

A. Yes.

Q. You are aware that she has obtained a permit or wears a badge when she goes door to door, isn't that true?

A. She doesn't have to obtain a permit. I did find out for sure.

Q. She wears a badge when she goes door to door in the Heights area, isn't that true?

A. Yes.

Q. Now the decision to ask for donations by a person who is going door to door is made by the Jehovah's Witness who is going door to door, correct?

A. Correct.

Q. And that decision is made when the Jehovah's Witness determines it would be appropriate to inquire whether a donation would be appropriate, correct?

A. Correct.

Q. You are willing to accept cash, correct?

A. Correct.

[83] Q. You are willing to accept checks?

A. Correct.

Q. And you would like the checks to be made out to the Jehovah's Witnesses, correct?

A. Correct.

Appendix L

Q. And then you go back to your kingdom hall, and at that point in time you deposit the funds for the worldwide work, correct?

A. Correct.

Q. Very rarely do you receive any funds that are associated with the ongoing work of the local kingdom hall when you do this door-to-door ministry, correct?

A. Correct.

Q. Mayor Abdalla readily identified himself as the mayor, correct?

A. At the end of our conversation, yes.

Q. Now you came back to the kingdom hall.

A. Yes.

Q. You saw Gene Koontz?

A. Yes.

Q. He's an elder in the church, correct? He previously testified in the courtroom here today, correct?

A. Yes.

Q. And at that time you were asked to prepare a document to write down what exactly took place?

Appendix L

[84] A. Yes.

Q. That document apparently can't be found, is that correct?

A. Apparently, yes.

Q. When that document was prepared by you, did you intend to make it thorough and complete?

A. I am sorry, your question again?

Q. When that document was prepared by you, did you intend to make it thorough and complete?

A. Yes.

Q. And when you completed that document at the request of Mr. Koontz, who did you give it to you?

A. Gene Koontz.

Q. Approximately when did you give it to him?

A. That same evening.

MR. CANTOR: One moment, Your Honor.

BY MR. CANTOR:

Q. Ms. Tuckosh, the Wellsville congregation and its members operate pursuant to the direction of the New York organization, correct?

A. Through the governing body, yes.

Q. And when the governing body instructs you not to go back to a home that has indicated that they do not wish to hear the word, do you honor that request?

A. Well, like I said, we go back after a year; yes.

[85] Q. If the individual were to write you a note to indicate that they do not want to hear the information, would you honor that note?

A. Yes.

Q. If that note was handed to you, would you honor it?

A. Yes.

Q. If it was placed on a bulletin board, would you honor it?

A. I don't know how I would answer that one, though.

Q. Now the conversation that you had with Mayor Abdalla, did he indicate to you that there were still discussions between Mr. Moake and Mr. Bruzzese about the new language to be inserted into the 1998 ordinance?

A. He mentioned he had been in contact with our attorneys; but as to specifics, no.

Q. So you don't know whether or not the legislation that's under discussion today was in effect at that time —

A. No.

Q. — correct? You are unaware of any information to indicate that the Wellsville congregation has requested or anyone has requested the opportunity to obtain a free license to go door to door within the village on behalf of the Wellsville congregation of Jehovah's Witnesses, correct?

A. Correct.

* * * *

APPENDIX M — EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF MAYOR JOHN ABDALLA DATED JULY 27, 1999

[commencing at page 88]

* * *

Q. How long have you been operating the tavern restaurant?

A. Since 1958.

Q. Do you have any other family within the village?

A. Yes, my brother, sister, nephews, nieces.

Q. I am going to ask you to take the defendant's exhibit book which has now been — that's the white book — and I am going to go through that white book with you. Okay?

A. Yes, sir.

Q. These are no longer exhibits. They have now been entered into evidence. So we will have that sense. Why don't we begin with Exhibit 7.

A. Yes, sir.

Q. What is Exhibit 7?

A. It's a topo map of the Village of Stratton.

Q. It's an aerial view?

A. Yes, sir.

Q. What is Exhibit 8?

A. Another picture of the Village of Stratton.

Q. This time it's a map, correct?

A. Yes, sir.

Q. Would you explain to us please where the Village of Stratton is in relationship to State Route 7?

A. Right parallel to it, no more than ten feet.

[89] Q. Can you also explain to us where Stratton is in relationship to the Ohio River?

A. On the other — maybe 30, 40 feet. Runs right through the village there on the side.

Q. How far is the Village of Stratton from the State of West Virginia?

A. Maybe a quarter of a mile. With the river.

Q. How far are you from the State of Pennsylvania?

A. Well, if you head north towards Midland, approximately 15, 16 mile.

Q. Now when we talk about the Village of Stratton, the portion where folks live, there is a portion where there is a big power plant, correct?

A. Correct.

Q. The portion where folks live, can you explain how large an area that is?

A. Not that large. Approximately, the residential section would be from Route 7 to the railroad tracks, maybe two football fields, two-and-a-half football fields. That's east and west.

Going north and south, maybe not even half a mile of residential section.

Q. Now with regard to the homes that are there, are they large homes or small homes?

A. They're average size homes. Nothing mammoth.

[90] Q. When was the general average age of the construction of the homes?

A. The age of the homes?

Q. Yes, sir.

A. The newest home in the village is 30-some years old.

Q. In addition to the homes there are also trailers?

A. Yes, sir.

Q. Are there any — Let's turn the page and go to Exhibit 9. What is Exhibit 9?

A. Yes, sir.

Q. Do you see Exhibit 9?

A. Do I see it? Yes, sir.

Q. And at the north and south corporation limits of the village are there signs?

A. Yes, sir.

Q. What do the signs say?

A. Speed checked by radar. No solicitation without a permit. Violators will be prosecuted.

Q. Now with regard to the village itself, are there any businesses located within the community?

A. There's a few.

Q. Would you tell us what they are?

A. Yes, sir. There's my place of business.

Q. The tavern restaurant?

A. The tavern restaurant, truck stop. . . .

* * *

[94] A. There was a couple instances.

Q. Did you suggest that during the course of the council meetings?

A. Suggest —

Q. Did you tell people this during the council meetings?

A. Yes.

Q. What information did you tell them?

A. We should do something. We have people coming in canvassing, solicitors, for example, selling siding, selling meats out of the back of a pickup truck, we had them doing blacktop driveways, just several instances. They hit on mostly the senior citizens.

Q. Okay, and with regard to the difficulties with these particular transactions, let's talk about them one at time. The first one that you identified was what? What was the first one?

A. Just now?

Q. Yes.

THE COURT: You're referring to the siding?

THE WITNESS: The siding.

BY MR. CANTOR:

Q. The siding.

A. Yes, sir.

Q. What were the events that you understood according to the siding?

[95] A. Well, I was at the office doing some work for the village, and I got a call from my place of business that some gentleman was running some siding; and I came in, I told the girl who called not to let on who I am, I will act as a customer, which I did. I asked for a bottle of beer and started kibitzing with them, and they told me they was selling siding and wanted to know if I wanted any, and I asked them if they had a permit.

Q. Now at that time was there an earlier ordinance that required a permit to go door to door?

A. Yes, sir.

Q. That's the permit you're talking about?

A. Yes, sir.

Q. Not the permit that we are talking about —

A. No, this was prior to that. And they told me they had. I asked them if I could look at it, and they come in with something from East Liverpool, Ohio; and I told them that was in another county, another community, and you should get one from the mayor, and they says, we did, and they filed through the paperwork and couldn't find it; and then I introduced myself as the mayor, and I asked them if they wanted to go up and get a permit. And they says, no, and they left town. I know the license plate was from Pennsylvania.

Q. Now the next episode that you made reference to at a [96] council meeting concerned what?

A. The people selling meats out of a pickup truck.

Q. And when did that occur?

A. That occurred several times. And I kept asking them — I wanted to know about the meat, about the freezer, because I didn't know, nobody knows how many times it was frozen and thawed and so forth, and I was concerned; and I asked them to identify themselves, there was no label on the truck and freezer, and they refused to do so. So I asked them to leave the village.

Q. And did they?

A. Yes, sir, but they have come back, different driver, different people.

Q. Did they register at that time?

A. No, sir. I gave them the same offer, and they refused, left town.

Q. With regard to blacktop?

A. Yes, sir.

Q. What was the episode that you explained to council?

A. They will come in, and at certain times of the year you don't do blacktop work. It's — You have to have a certain temperature. It has to be heat, and the blacktop plants have to be open. At this particular time there was none open. We have one just south of it, a mile and a half from the village.

[97] Q. And what was the concern with regard to the blacktop sales?

A. They will come in and offer you a deal you can't refuse. You think you can't refuse it. You give them a down payment, and they leave, and you don't see nothing more of them.

Q. Did you have an experience like that within the village?

A. I am trying to remember if I did or not. I have heard about. It was advertised. We was warned. It was on the news media, the scam artists, construction artists.

Q. So not just in the conversations that you had during your council meeting, you also had — you had personal information from the news media and other sources as to the need to prevent scams, con men coming in and taking advantage of the senior population; is that correct?

A. Yes, sir.

Q. Now you've indicated that you are a long-time resident of the community. How frequently do you receive phone calls from the hours of — the not traditional working hours nine to five?

A. I receive calls all time of the day and the night. The only time —

Q. Is it at work?

A. At my place of business, yes, I stay there.

* * *

[100] Q. So when you posted bond in this particular case, there was nothing unusual about you having —

A. No, sir.

Q. — identified the amount of bond?

I would like to talk a little bit more about the population of the community. Now you previously told us about the senior citizens. Let's talk about the folks who are actually employed during the work week. Are these people employed on shifts generally?

A. Yes, sir.

Q. And what are the hours related to the shifts?

A. Well, they'll work daylight, will be seven to three; afternoon, three to eleven; and the midnight would be eleven to seven.

Q. Would you characterize the community as close knit?

A. Very much so.

Q. Generally are long-term residents within the community?

A. Yes, sir.

Q. What are the regular working hours of the village hall?

A. Approximately 9:00 to 4:00, 4:30.

Q. How many police officers do you have in town?

A. One full-time, one part-time.

Q. His name presently?

[101] A. Mike Wilson.

Q. What hours does he work?

A. His hours are seven in the evening until four in the morning, or three in the morning.

Q. During the course of — strike that.

How would you characterize the crime that occurs within the village?

A. Very low. Not — nothing which you call very, very serious unless it affects the individual.

Q. You have indicated that you are a member of the senior citizens center. You have indicated that your brother also resides in town. What's your brother's name?

A. Fred Abdalla.

Q. Does he hold any elected office?

A. Yes, sir, he is the sheriff of Jefferson County.

Q. And he in advance of you was actually the mayor of this town, was that true?

A. I was mayor. He was mayor. I am mayor now.

Q. Can you give me the chronology? In other words, what year did you first start as mayor?

A. I was mayor from '63 to 1970, and some gentleman took my place by the name of Paul Zdinak. He was there for the unexpired term. My brother ran and was elected, and then Fred was elected sheriff, had another mayor, and I was back in Stratton then, and people came to me and said, your [102] brother is not here. Would you run again? Which I did, and I was elected, and that was in '87.

Q. And you have been mayor ever since?

A. Yes, sir.

Q. Does your brother, the sheriff, make speaking engagements in the area?

A. Yes, he does.

Q. Do you participate or attend those speaking engagements?

A. Not always, not when I am busy.

Q. But do you attend some?

A. Yes.

Q. With regard to the Village of Stratton, has he made any speaking engagements concerning crime?

A. Yes, sir.

Q. Where does he make those speaking engagements?

A. At the senior citizens center.

Q. What is the nature or the topic of his discussions with the seniors?

MR. POLIDORO: Objection. Calls for hearsay.

THE COURT: As far as nature of the topic, I will overrule the objection. The topic, the contents, are hearsay.

MR. CANTOR: Thank you, Your Honor.

BY MR. CANTOR:

[103] Q. What is the topic?

A. Scam artists, people taking advantage of the older people.

Q. Have the Wellsville congregation made an application to obtain a permit under the present ordinance for registration of soliciting and canvassing?

A. No, sir. May I say something please?

Q. No, sir, not at this time. Not at this time.

A. Sorry.

THE COURT: You will get your chance.

MR. CANTOR: One moment please.

BY MR. CANTOR:

Q. During your tenure as mayor and under the present ordinance that's under discussion, on how many different occasions have you denied a permit to anyone requesting a permit?

A. I never have denied anybody a permit. Nobody has ever asked for one. Nobody from the Jehovah's Witnesses has asked me for a permit from when I was mayor in the '60s to the present.

Q. I am talking about now. My question to you only pertains to the present ordinance that's under discussion. Has there been an occasion when anyone had made an application for a permit and was denied one?

A. No, sir.

* * *

[105] Q. As presently used in the Village of Stratton?

A. Yes, sir.

Q. Would it be fair to say that this represents all of the applications for permit to register for canvassing, solicitation, pursuant to the present ordinance?

A. Yes, sir.

Q. Exhibit 36, that's a permit to canvass, to solicit, and there is a signature line on the bottom for the mayor?

A. Yes, sir.

Q. That's you?

A. Yes, sir.

Q. Who actually gives these out?

A. The village clerk.

Q. You have got them pre-signed?

A. Yes, sir.

Q. Did there ever come a time in which you have revoked a permit that was actually issued?

A. No, sir.

Q. Do you understand under the ordinance that you have the opportunity to revoke permits?

A. Yes, sir.

Q. What is your understanding of that opportunity?

A. If they misrepresented themselves or if fraud was being committed.

Q. What do you mean by fraud?

[106] A. Doing something that's wrong, some injustice to the senior citizens, something that they claim they were going to do and not doing or doing the opposite.

Q. Could you give us an example please?

A. Okay. I don't know how to put it in the right words. If they come in and wanting to do, say, a siding job and they end up doing something that's not the siding, something different, different than what they intended to do or tell their customers that they are going to do, the potential customers.

Q. What beneficial effect does the sign-up by the solicitors have for the community?

A. In case something is wrong, something goes wrong, that I have a recourse to come back on the people. If they misrepresented, done some injustice to the people, committed a crime or whatever, I have an idea how to go, the registration, the automobile, the name or the address or the company they're representing.

Q. Now since 1996, the village has had a no solicitation ordinance. Do you receive regular phone calls from people who want the knocking on their doors to stop?

A. No, sir. You're saying did —

Q. Let me rephrase the question.

A. Rephrase that please.

Q. Do you receive phone calls from people who are upset [107] and don't want solicitors at their door?

A. They're calling and asking —

Q. Asking you to stop the soliciting?

A. Yes.

Q. How frequently does that happen?

A. It seems like any time somebody is being disturbed, they will ask, John, did you give anybody a permit? And I'll say, no. They'll say, they're here. They are bothering me.

Q. Can you give us some names of folks who regularly make those phone calls?

A. One name that was here was Walter Parsons, I had a Bill Shields, Carol Householder, Irene Blischak, Teresa Zdinak on a couple occasions, Beth Zdinak.

Q. Let's now turn to Exhibit 37. Exhibit 37 deals with what we call the Kirby vacuum cleaner situation?

A. Yes.

Q. That was the situation that was dismissed in mayor's court, correct?

A. Yes, sir.

Q. Now each month at your council meetings does the chief of police, Mike Wilson, make a report?

A. He leaves a police report on my desk and each of the councilmen's, yes.

Q. And those police reports are found in Exhibits 12, [108] 13, 14, 15 and 16 for the respective months as identified, is that correct?

A. Yes, that was your exhibit.

Q. Would you look at Exhibits 13, 14, 15 and 16?

A. Do you want me to read them or just look at them?

Q. I want to make sure those are the actual police reports.

A. Yes, sir.

Q. Those were the police reports that were obtained that identified soliciting problems within the village, correct?

A. Okay.

Q. Is that correct?

A. Yes, sir.

Q. Now I am going to ask you to go to Exhibit 10. Are you at Exhibit 10?

A. Yes, sir.

Q. At 10A, do you see 10A through 10D are no solicitation signs on homes that are residences within the community?

A. Yes, sir.

Q. 10E, what does that show?

A. The village square.

Q. And what's located in the village square?

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A. Well, a rather large parking area. You have got the grocery store on the one side. You have the post office — [109] Whoever took the picture of the post office it would be behind them. To the right you have my tavern restaurant and the truck stop, and right behind the grocery store is another tavern.

Q. Is there a need for a permit to talk to people in this area of the square?

A. No, sir.

Q. Let's turn the page. 10F, post office.

A. Pardon me?

Q. 10F, [illegible]ost office?

A. That's the post office.

Q. Now I don't know if, I may have stated it in opening statement, but I don't know if I asked you the question, are there any mail boxes within the community —

A. No, sir.

Q. — with respect to the homes? So everybody has got to come here to the post office?

A. Yes, sir.

Q. Is there any restriction on canvassing or soliciting or asking people for information here at the post office?

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A. No, sir.

Q. So you get 100 percent attendance going to the post office Monday through Friday?

A. Correct.

Q. Exhibit 10G, the post office lobby. That shows the [110] interior of the post office with the post boxes?

A. The mail boxes, yes, sir.

Q. The same answer for 10H, mail boxes in the post office?

A. Yes.

Q. 10I, Riverside Market?

A. Yes.

Q. Is that an area that you need a permit to canvass or solicit?

A. No.

Q. 10J, now the village has got a playground, you call it a playground. Would you explain to the Court how large a playground it is? It's called the Fifth Street playground.

A. The one here on 10J?

Q. Yes, sir.

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A. It is a nice size for the Village of Stratton. Size-wise?

Q. Yes, sir.

A. It may be 100 by 200. You have play toys for the children, the swing sets, little animals on springs. We have a tennis court and a basketball court.

Q. Did you have anything prohibiting anybody from canvassing or soliciting at the playground?

A. No, sir.

[111] Q. 10K, that's the entrance to the Fifth Street playground, correct?

A. Yes.

Q. Those are the hours in which they are open on this sign?

A. Yes, sir.

Q. 10L, that is the Fifth Street playground, correct?

A. Yes.

Q. A portion of it anyway?

A. Parts of it.

Q. Now there's another location called Stratton Park.

Appendix M

A. Yes, sir.

Q. Can you describe for us how large an area that Stratton Park encompasses in the village?

A. About ten acres.

Q. And 10M is a picture — What is that?

A. One of the shelters.

Q. A shelter, and what is 10N?

A. It's a shelter.

Q. And N.

A. Oh, N, I am sorry, that is a picture of all the smaller shelters throughout the park.

Q. What is 10O?

A. An entrance into the Sammis plant at Ohio Edison.

Q. Is it fair to say that anybody can solicit at the [112] playground or the park?

A. Yes.

Q. The largest employer in town is at the Sammis plant of Ohio Edison?

A. Yes, sir.

Q. Can anybody solicit there?

A. Yes, sir.

Q. You don't need a permit?

A. No, sir.

Q. 10P, it's a gate to Stratton Heights Road?

A. Yes, sir.

Q. Again you don't need a permit to be there?

A. No.

MR. CANTOR: You may inquire.

THE COURT: Thank you, counsel.

You may cross-examine.

MR. POLIDORO: Thank you, judge.

CROSS-EXAMINATION

BY MR. POLIDORO:

Q. Good morning, mayor.

A. Good morning, sir.

Q. Mayor Abdalla, the street signs that you testified about with respect to no solicitation coming into the village and exiting the village, when were they first put [113] up?

A. They have been there as long as I can remember, sir.

Q. About how long is that, sir?

A. It would be 30, 40 years.

Q. I turn your attention, sir, to Exhibit 35 in front of you please and ask that you turn to them. Sir, do you recognize Exhibit 35? And I ask you to look through all of them please.

A. Pardon me?

Q. I ask you to look through all of the exhibits please and ask if you recognize them, sir?

A. Yes, sir.

Q. Do you recognize those?

A. I recognize them from seeing them in court and in deposition before, yes, sir.

Q. Is it fair to say those are requested permits?

A. Yes, sir.

Q. And is it fair to say that the permission that was requested in those permits was granted, correct?

A. Yes, sir.

Q. The permits that the village issues are pre-signed by yourself, correct, mayor?

A. Yes.

Q. It's also correct that you have no documentation with respect to the percentage of the population in the village [114] of Stratton that are retirees, correct?

A. How is that again?

Q. You have no documentation?

A. No, nothing in writing.

Q. Nothing in writing. And apart from the senior citizens list that you provided the Court, do you have anything in writing with respect to how many senior citizens actually reside in the Village of Stratton?

A. Not in writing, no, sir.

Q. If one of Jehovah's Witnesses requested a permit to go from door to door from the hours of nine o'clock in the morning until seven o'clock in the evening, would they be granted one?

A. I would grant them one and explain to them it's nine to five, sir.

Q. My question, though, is a little more specific. If a Jehovah's Witnesses requested a permit to go door to door from the hours of nine in the morning to seven in the evening, would they be granted one?

A. No, I wouldn't grant them one. I would have to check with my solicitor.

Q. The answer to that is no, sir?

A. No, sir.

Q. Do you know how an individual would be able to reach someone door to door who was not home between the hours of [115] nine to five?

A. Yes, they can leave a card and tell them to call back if they are interested.

Q. Is there any other way that they can be reached?

A. Not to my knowledge, no.

Q. You have no documents with respect to any complaints concerning the activities of Jehovah's Witnesses in the Village of Stratton, correct?

A. Nothing in writing, no, sir.

Q. And you would agree with me, sir, there's not too much crime in Stratton, correct?

A. You're correct, no.

Q. That to the best of your knowledge, there is no crime directly related to door-to-door activities, correct?

A. Correct.

Q. That there are no burglaries?

A. Correct.

Q. Again with respect to door-to-door activity, no violent crime, correct?

A. Yes, sir.

Q. There is no documentation with respect to any crime with respect to door-to-door activities in con games, correct?

A. Correct.

Q. And also there is no documentation with respect to [116] any crimes committed in door-to-door activity with reference to any schemes in which people were bilked, correct?

A. Yes, sir.

Q. You have never received a complain as a mayor, have you, sir, with respect to an individual who called on a door with a no trespassing sign?

A. Say that one more time please?

Q. Certainly. You have never received a complaint that someone called on a home that had posted a no trespassing sign?

A. No, I haven't.

Q. You have never received a complaint of an individual, by a homeowner, of someone calling on a home with a no solicitation sign, correct?

A. To my knowledge I have had complaints, but I don't know if they had no solicitation signs or not, but I have had complaints.

Q. All right, sir. I am not speaking about the complaints of individuals going from door to door. My question, sir, specifically is: Have you ever received a complaint of an individual calling on a door that had a no solicitation sign posted?

A. I answered that. I said no. But I don't know if anybody called complaining they had the sign or not had the [117] sign.

Q. Sir, your role as judge of the mayor's court, what do you do?

A. In mayor's court I hear mostly traffic cases.

Q. Do you serve as the judge?

A. Yes, sir.

Q. And as the judge, do you interpret the laws that are before you, the ordinances?

A. The village's ordinances, yes, sir.

Q. Now you heard your counsel speak about the Kirby vacuum cleaner incident.

A. Yes, sir.

Q. Do you remember that? And you served as the judge of the mayor's court for that incident, correct, sir?

A. I presided over the court.

Q. And the individuals — There were three, is that correct, sir?

A. Yes, sir.

Q. The individuals were charged with violating ordinance 1998-5, which is the ordinance that is the subject of this inquiry, is that correct, sir?

A. Correct.

Q. Do you have that ordinance in front of you, sir? Maybe —

THE COURT: Let me draw a distinction, counsel, in [118] the questioning. The mayor in Ohio holds two very different functions. He is an executive officer, or she is an

executive officer, and is required to enforce the peace. There is another role that you are inquiring into now which has to do with the mayor as a judicial officer. You walk into the issue of judicial immunity if we're into that aspect of the function here?

MR. POLIDORO: I am really going into his understanding of the ordinance that is applying in both capacities, judicial as well as executive. However, I can limit my questioning to the executive role, if Your Honor desires.

THE COURT: I think that is legally necessary.

MR. POLIDORO: I will do so, judge.

BY MR. POLIDORO:

Q. Mayor Abdalla, were you involved in the charging of those three individuals in the Kirby vacuum cleaner incident with a violation of ordinance 1998-5?

A. Did you say would I charge them?

Q. Yes.

A. No, the police chief charged them.

Q. How did that occur?

A. How did it occur that they were charged?

Q. Yes.

A. I got a call, I think I said the name was Mrs. [119] Householder, that someone was there trying to sell — trying to do something with their carpet so they could come in and clean it. At that time I didn't know who they were. I called the chief. I called the sheriff's office, asked the chief to have them — to have the chief get ahold of me. I explained to him, when he approached me, the circumstances of the telephone conversation, and I says, find them and take them to the mayor's office and call me when you have them, which he did.

And then we in turn explained the ordinance to them. They claimed they had never seen the ordinance. They were offered, if they wanted to get a permit, they can get one. And I had them post a $100 bond, told them that the hearing was set on the next council meeting date, and they were more than welcome to appear with their counsel, their attorney.

Q. So you personally had this conversation with the three individuals prior to them being charged?

A. Yes, sir.

Q. Did they get a little obnoxious with you?

A. Yes, sir.

Q. When using the term "a little obnoxious," what do you understand that to mean?

A. Their tone of voice they was raising. They told me they are entitled to come in. I told them that they are [120] entitled if they had a permit.

Q. On what basis did they tell you they were entitled to come in?

A. First they said it was on the First Amendment. And I says, yeah, but you are not preaching anything. Then I took my position, especially at that time of the day, why I like to have everybody register.

Q. And after they had that discussion with you, who set the $100 bond?

A. I did.

Q. And why was that, sir?

A. I thought it was a fair price for them to pay.

Q. Why did you feel it was necessary to set a bond?

A. To make sure they appeared at their hearing date.

Q. And what was your understanding of the violation that they had committed as a mayor? What was your understanding of the violation?

A. That they were soliciting but without a permit.

Q. What were they specifically doing?

A. Canvassing, going door to door, or soliciting, going door to door, whatever choice of words that you use.

Q. Sir, when you use the terms "canvassing" and "soliciting," in your mind they refer to the same activity; is that correct?

A. Yes, sir.

[121] Q. Is it fair to say under ordinance 1998-5, when it speaks about cause, that you don't know what that refers to, correct?

A. Pardon me?

Q. Yes, sir. We're speaking about ordinance 1998-5. Section 116.01, it speaks about an individual who would canvass or solicit to promote, selling and/or explaining any product, service, organization or cause. Is it fair to say, sir, that you don't know the definition of the word "cause" under that ordinance, correct?

A. Cause is you canvassing everybody, talking to everybody.

Q. What I am asking you, is it fair to say that the definition of that word "cause" under your ordinance, you don't know the meaning of that, correct?

A. I thought I knew it and just explained it, how I understood it to be, sir.

MR. POLIDORO: Counsel, do you have a deposition that you can give to your client?

BY MR. POLIDORO:

Q. Mayor, I am going to ask you on page 23 — Sir, that deposition has your name in front?

A. Yes, sir.

Q. I ask you to turn to page 23 and ask you to review line 7 through line 9.

[122] A. Yes, sir.

Q. Let me ask you the question again. Do you have an understanding of what the meaning of the word "cause" is in the ordinance under 1998-5?

A. This answer says, I don't know.

Q. Now, sir, the ordinance calls for you to administer — actually issue the permit, correct?

A. Yeah, I sign it, yes, sir.

Q. And when we speak about the section of the ordinance, I'm speaking about section 116.03, subdivision (b)(6), it says that the individual seeking the permit will provide such other information concerning the registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

It's fair to say, sir, that you do not know what that refers to, correct?

A. I think I know what it means.

Q. Sir, I ask you to turn to the bottom of page 28. If you will again review with me, begin your review with line 23 and continue to the top of page 29, line 5.

A. I don't understand, sir.

Q. Meaning, sir, that you don't understand what other information the ordinance is requesting? Is that fair to say that that part of the statute you don't understand?

A. I think I understand the statute. . . .

* * *

[127] * * *

Q. Are you aware that the ordinance gives you the authority to deny the granting of a permit?

A. Yes, sir.

Q. Upon what basis would you exercise that authority?

A. Just like I stated to you.

Q. Apart from that, any other basis?

A. Not at this moment right now. I'm not saying that it can't be, but right now, no.

Q. In your understanding as a mayor, how does the activity of Jehovah's Witnesses in going from door to door to speak to householders about the Bible fit within the ordinance?

A. How do they fit within the ordinance?

Q. Yes, sir.

A. To me they are soliciting, sir.

Q. How so, sir?

A. They are going from door to door canvassing, soliciting. And people call, report the disturbance they are having with them, and I ask them to leave; but they never ask for a permit. If they got a permit, they can go ahead, sir.

Q. I appreciate that, sir. How are they soliciting, sir?

A. In my opinion they are going door to door, and [128] they're preaching their so-called gospel; and sometimes, like the lady stated earlier, at the end of the conversation they solicit funds.

Q. So-called gospel means what, sir?

A. Pardon me?

Q. So-called gospel means what?

A. What they're preaching, their gospel; and at the end of their preaching, their service, what they're doing, they ask for money.

Appendix M

Q. So is it the mere fact that individuals are going from door to door that in your mind makes them fall under the ordinance?

A. Yes, sir.

Q. Is it fair to say, sir, that the problems that the Village of Stratton have encountered with respect to Jehovah's Witnesses going from door to door is merely the aggravation of the citizens and nothing else?

A. The citizens complaining to me, yes, sir.

Q. So apart from the aggravation of the citizens, is there anything else?

A. Not right now, no, sir.

Q. You've heard Mrs. Tuckosh testify in court this morning, correct, sir?

A. Yes, sir.

Q. Was her account accurate?

[129] A. Yes, sir.

Q. My final question to you, mayor, is it's your belief that no one who lives in the Village of Stratton wants to listen to Jehovah's Witnesses, correct?

A. From the comments, the calls that I got from people, the majority of them did not want them bothering them.

Appendix M

Q. But I am asking you, it's your understanding that no one in the village wants to listen to Jehovah's Witnesses, correct?

A. Yes, sir.

MR. POLIDORO: Judge, I have no other questions.

THE COURT: Thank you, counsel.

You may redirect, if you wish, Mr. Cantor.

MR. CANTOR: Thank you.

REDIRECT EXAMINATION

BY MR. CANTOR:

Q. During the course of your cross-examination there was some discussion about the bond that was set in the Kirby vacuum cleaner case. Could you tell us where the individuals were located, where did those folks live that you required them to post bond?

A. They were nowhere in the immediate area. They was — I think one was from Pennsylvania. The addresses are listed here somewhere. I just turned the pages.

[130] Q. I am going to ask that you take — I guess it's the white book.

A. The white book.

Q. And go to Exhibit 33.

A. 33.

Q. Yes, sir.

A. Yes, sir.

Q. What is Exhibit 33?

A. It's a list of the names and addresses of the citizens of the village.

Q. Are these made available to each solicitor who comes to the village?

A. Yes, sir.

Q. Now with regard to the applications for soliciting that have previously been filed with the village, has anybody manually written down all the names of every resident?

A. Yes, sir, my village clerk.

Q. I am talking about in the application form. No one in the application form has written down all the —

A. No.

Q. What do they write?

THE COURT: I don't mean to interrupt, but the ordinance doesn't say that, does it?

MR. CANTOR: Please?

[132] Q. With regard to Exhibit 33, who maintains that listing?

A. The village clerk.

Q. And does the village clerk make that list available to anyone?

A. To anyone that requests it, yes, sir.

Q. And are these documents attached to any forms that the city provides?

A. Yes, sir.

Q. Through what?

A. Whatever the permit, the application, you have the list of all the village residents, their addresses, names and addresses.

MR. CANTOR: Thank you, Your Honor. Nothing further.

THE COURT: Anything further, counsel?

MR. POLIDORO: No, Your Honor. Thank you.

THE COURT: Thank you, Mayor Abdalla. You may step down.

* * * *

APPENDIX N — EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF FRANK J. BRUZZESE, SOLICITOR DATED JULY 27, 1999

[commencing at page 135]

* * *

FRANK J. BRUZZESE

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. CANTOR:

Q. Mr. Bruzzese, would you please state your full name?

A. Frank Joseph Bruzzese.

Q. And your business address?

A. Post office box 1506, 300 Sinclair Building, Steubenville, Ohio 43952.

Q. And what is your occupation or profession?

A. I am an attorney-at-law.

Q. Would you briefly explain to us your educational background?

A. I graduated from Steubenville High School in 1967, went directly to Johns Hopkins University in Baltimore, Maryland, where I graduated four years later with a [136] bachelor of science degree, then proceeded from there to the Claude W. Pettit College at Ohio Northern University in Ada, Ohio, which I graduated in 1974 with a juris doctorate degree.

Q. Upon your completion of your education at law school, did you come to be admitted to the Bar of the State of Ohio?

A. I did, in 1974.

Q. From 1974 to the present have you been authorized to practice law within the State of Ohio?

A. Yes, sir, I have.

Q. Directing your attention to the Village of Stratton, when did you begin your relationship with the Village of Stratton?

A. I became the village solicitor in June of 1975.

Q. Have you been the village solicitor from 1975 to the present?

A. Yes, sir.

Q. During that period of time beginning in 1975 to the present, were there ordinances of the Village of Stratton dealing with solicitation?

A. Yes, sir, there were.

Q. And the sign that is outside on the borders of the village, that's a no solicitation, prosecution will occur, are you familiar with those signs?

[137] A. Yes, sir. There has always been, since my time there, always been a sign at the north entrance to the town and the south entrance to the town that say, no solicitation without permit. Violators will be prosecuted.

Q. Beginning in 1976 — excuse me, 1996, did there come a time which, I will refer to as the first generation of the ordinance that we have under discussion, came into play?

A. Yes, sir.

Q. Can you briefly explain to us what was the reasoning behind the initiation of the legislation for the Village of Stratton in 1996?

A. The village council wanted me to draft legislation that would regulate the practice of soliciting, canvassing, hawking, peddling, so forth, in the territorial limits of the Village of Stratton, Ohio, based on recurring incidents and problems people had had over the years; and when I researched the problem in the village ordinances, I found just the old original ordinances that formed the village government from 1949. I felt they were woefully inadequately. So I redrafted an ordinance that became effective in 1996.

Q. Can you briefly describe for us the information that was discussed with council concerning the initiation of the 1996 legislation?

[138] A. Yes, sir. We discussed with council that the types of problems that had recurred over the years could in fact be regulated under an Ohio statute and under the Ohio Constitution.

Q. Let's stop right there. What problems are you making reference to?

A. There had been problems with people going door to door at night in the late night hours, as late at 11:00 p.m., which caused some fear in some citizens, especially the older citizens or the people who lived alone. There had been incidents of people purporting to be legitimate salesmen who turned out to be less than legitimate.

Q. Can you give us some examples of that, sir?

A. Yes, sir. The type that I am sure you are familiar with, the aluminum siding, high-pressure salesmen, the people who purport to be in the construction business and take a down payment, representing that they are taking in advance the payment of money for materials and then never show up. There have been incidents where people, although their purpose may have been legitimate, made the homeowner feel that the homeowner couldn't get rid of them, and they felt pressured. Things like that.

Q. In addition, so I understand the duties of the solicitor within the Village of Stratton, why don't you explain to us what those duties actually are?

[139] A. My duties as solicitor?

Q. Yes, sir.

A. I think in general I can say that my duty as solicitor is to be the attorney for village. That would include the specific duties of giving legal advice to the council, mayor and other village officials when they ask for it in their administrative capacities. My duties would include the drafting of ordinance legislation and resolutions. My duties would include serving as the prosecutor in the mayor's court and essentially taking care of any legal matter, whether it would be legal advice or litigation, including civil litigation, that may arise for the village.

Q. What about giving advice to the law — You have one police officer within the village, correct, during your tenure?

A. I do that when I'm asked for advice.

Q. And you advise him when necessary?

A. Yes, sir. I have had calls at night on what to do, and I give advice.

Q. And do you review police reports?

A. I do.

Q. With that as a background, and you have identified certain events that have occurred within the village, is there anything unusual about the nature of those crimes as [140] it relates to the geographic location of the village as it relates to crime?

A. Yes, sir, I think so. The Village of Stratton, Ohio, is an easy target for the flimflam man. It is an easy target for the thief or the transients, and that's true because it is a very small town, I think you could throw a baseball across with two throws, right on the major highway that's the north and south route, State Route 7. So there's easy in, easy escape from the Village of Stratton. There's only one police officer. It's got a high contingent of elderly and retired citizens, and I think it's the model of a target for crime that is historically related to people who purport to be door-to-door canvassers or solicitors.

Q. Now you indicate that you provide advice to the village council. At those village council meetings are there monthly police reports?

A. Yes, sir. As a matter of fact, it's twice a month.

Q. Twice a month, excuse me.

I am going to ask you to look at the white exhibit book and ask that you go to Exhibit 12.

A. Yes, sir, I have that in front of me.

Q. And what is Exhibit 12?

A. Exhibit 12 is one of the monthly police reports from August of 1996 for the Stratton police department.

[141] Q. And what, with regard to the issue of soliciting and no permits, was unusual with regard to that report?

Appendix N

A. In this exhibit there are — there's a report from August 5, 1996, at 8:53 p.m. that there were — a complaint about unauthorized solicitations, and the subjects were advised they needed a proper permit, and they would get one before further solicitation was allowed.

Q. Let me stop at this point for a moment.

A. All right.

Q. Has there been some discussion or advice that you have given dealing with whether or not you immediately prosecute or to give information when you find a violation of this nature?

A. Yes, sir, I have advised the chief of police and the mayor that we should take what I call the informational approach, which is when you come upon a person who is soliciting unauthorized, without a permit, you should first advise them that we have an ordinance that requires a permit, tell me or show them where to go to get a permit; and then as long as they're willing to go get the permit, there should be no citation, no arrest and no prosecution; and that's been our policy.

Q. Now with regard to that first, for Exhibit 12, that policy was followed, correct?

A. Oh, yes, sir.

* * *

Appendix N

[143] * * *

Q. With regard to the month of October, 1996, were there any difficulties with regard to permits?

A. Yes, sir, there is a report from October 17 of 1996, 5:10 p.m., in reference to a complaint about two subjects in a blue pickup truck soliciting. They were located and advised to obtain a permit, or they would arrested in the future for soliciting without a permit.

Let me see if there's any others. I'm not seeing any others on the October, 1996, report.

Q. Let's go to Exhibit 14 for the month of March, 1999.

A. There's a second page to Exhibit 13. Let me look.

Q. Yes, sir.

A. Okay. Exhibit 14?

Q. Yes, sir, what date is that?

A. That's for March of 1999.

Q. Again, this is a police report prepared by the chief of police?

A. It is, and it notes on March 2 of 1999 at 7:10 p.m. he cited, the chief cited, three individuals for soliciting without a permit.

Appendix N

Q. Is this the group commonly referred to as the Kirby vacuum cleaner case?

A. Yes, sir.

Q. Any other incidents in the month of March, 1999?

[144] A. Let me just check. I'm not seeing any. Am I missing any?

Q. Let's go to 15.

A. I'm looking at Exhibit 15.

Q. That's a report dated April 19, 1999, from the chief?

A. Yes, sir. It contains a police report from April 16, 1999, at 1:27 p.m. in the afternoon in regards to three or four subjects going door to door on Second Avenue near the post office, and it was determined that they were trying to locate the owner of a vehicle with a for sale sign that was parked.

Q. Let's go to Exhibit 16.

A. I'm not sure if there are others. Okay. I'm looking at Exhibit 16.

Q. That's May, 1999?

A. Yes, sir. There's a May 20, 1999, report at 11:15 in the nighttime about three subjects soliciting on First Avenue. The chief contracted them and informed them of the requirement to obtain a permit.

Appendix N

Q. There came a time when you started receiving communications with a representative of Watchtower?

A. Yes, sir, that's true, Mr. Moake.

Q. And that correspondence is identified beginning at Exhibit No. 17?

A. I'm looking at Exhibit No. 17 now.

[145] Q. Now would you basically explain to us why were you communicating with Mr. Moake?

A. Because after the passage of the 1996 ordinance, Mr. Moake sent me a letter on behalf of the Watchtower organization in New York, criticizing that ordinance and contending there were aspects of it that were unConstitutional under the First Amendment.

So I began corresponding with Mr. Moake in order to address his concerns and correct any deficiencies in that ordinance that he would point out to me from the Constitutional aspect and try to arrive at an ordinance that was effective and Constitutional and satisfactory to Mr. Moake and his organization.

Q. Now with respect to those communications, those communications are identified in Exhibits 17 through 24; is that correct?

A. Yes, sir. Exhibit 17, 18 — yes, sir, you are correct. All those exhibits are the correspondence that I am referring to.

Q. Did you have any telephone communication with Mr. Moake?

A. If I did, I don't recall any.

Q. As a result of these letters going back and forth between you and Mr. Moake, did you make changes to the 1996 ordinance?

[146] A. Yes, sir, I did.

Q. What changes did you make?

A. I made a variety of changes. First of all, from the outset I took Mr. Moake's criticism and based on the research that I did starting with the case law he gave me, decided that if there is anything consistent in the Constitutional case law that I was reading, it is that the discretion in the village officials should be narrowed and reduced to the extent reasonable and at the same time leave the judgment and the decision making to the private property owner. As a matter of fact, that that would be the best possible regulatory scheme.

So I created the concept of the owner's registration form as a form of communication — well, as a form to be used by the owner to exercise his decision and to also communicate to the would be solicitors and canvassers.

And then the other end of that was to reduce the amount of discretion that the village officials, including the mayor, would have, so that I would make the permit automatically triggered by a completed information form.

Mr. Moake also criticized — Essentially Mr. Moake was criticizing substituting the judgment of the officials for the citizens. So I created a way that the citizen would exercise his own judgment over his own private [147] property and reduce the amount of judgment that the officials could impose on either the would be solicitor or the citizen.

I remember Mr. Moake also criticizing a $10 fee that we had for the registration, and I deleted the fee in the end, recognizing his point; and although I found support in the law for that fee, I just considered it unnecessary. So I deleted the fee.

And I'm sure there are other things that are — I think I summarized my changes in my last letter to him. If I could just look at that.

Q. Exhibit 24.

A. Oh. One of his criticisms was he thought it would be burdensome for a person to have to actually walk around the town and look at all of the addresses and then write them by hand into his registration form when he was registering for a permit.

Q. How do you answer that criticism?

A. As I pointed out to him in my September 9 letter, the solicitor would not have to, with his own hand, write those addresses, nor would he have to walk around the town to look for all the addresses. Because Stratton is such a small town with only 70 houses, and the rest being trailers and

trailer courts, it was an easy matter for the village to create a list of residence addresses with a designation [148] telling you which ones are homes, which ones are businesses, and which ones are churches and so forth.

And when the would be solicitor or canvasser goes in to register, he has a choice. If he only wants to go to a few houses, he can write them in by hand. If he wants to go to a bunch of houses and he wants to take the time, he can write them in by hand, and we gave him space for that. But his other options would be to take the list that the clerk makes available and check off from that list the ones he wants to go to; or if he wants to go to them all, write in on the blank of the form, I want to go to all the ones on the attached list, and attach the list.

Q. So it's incorporated by reference?

A. Yes, and it's a tool that the owner can use.

Q. How is this different from a phone book?

A. It isn't. The information on the list that we make available to the registrant is in the phone book and it's also in the directories, or sometimes are called the crisscross directory.

Q. Let's stop at this point. What is the crisscross?

A. To me it's like a phone book, but you look up the street and address, and it gives the name of the person; whereas the phone book, you look up the name and then it gives the street, the address and the phone number.

Q. Based on your review of the records of the village [149] concerning those who made application for a permit, do you know of anyone who has written every single number or street address?

A. No, sir, the opposite is true.

Q. How was the ordinance complied with in that respect?

A. All of the people who have applied since this ordinance has been in effect have written words to the effect: I want to go to all of these addresses on the list, and that's fine. They get a permit.

Q. Any other changes based on your communications with Mr. Moake?

A. Let me just review my letter. Oh, he was the one that first — Mr. Moake —

Q. Go ahead please.

A. Mr. Moake was the one who first suggested that we incorporate the idea of a sign posted on the house of a person who didn't want solicitation. So I changed one of my earlier drafts to include the no solicitation sign being posted on a house, meaning that now I changed the ordinance so that the owner would have to do two separate and distinct things to prohibit people coming to the door of his house. One would be to file his registration form with the mayor's office. And two is he would also have to post a sign that says no solicitation on the residence in a position where it is visible from the sidewalk so that the [150] would be solicitor or

canvasser could know before he set foot onto private property that this is one of the places he is not welcome. It would serve as a reminder.

You might come in and get a registration form and register and look at the forms in the clerk's office. If you don't carry them with you, when you get out on the street, you might forget which one said no. So we double covered it by putting the sign on the house, and that's a reminder to the would be solicitor.

Q. At the time that you and Mr. Moake were writing letters back and forth were you aware of any writings that emanated from the Watchtower group to Wellsville which would indicate they did not have to recognize or accept the no solicitation sign on a home?

A. No, sir.

Q. Now one of the questions that the ordinance talks — one of the issues that the ordinance discusses is: When can you solicit? When can you canvass? What days of the week are identified within the ordinance?

A. You can canvass seven days a week, Sunday through Sunday.

Q. Is there an hour limitation?

A. Yes, sir, there is a separate ordinance that limits the solicitation and canvassing time between the hours of 9:00 a.m. and 5:00 p.m.

* * *

[153] * * *

Q. In regard to your information that you provided council, what information was that?

A. I reported to council periodically that I remained in contact with the Watchtower organization's attorney and that we were working it out; and somewhere, I don't know if it's in this correspondence because I would need to reread it, that as far as the Jehovah's Witnesses organization, that they would be happy to call ahead before they came to town while we were working out an ordinance. I reported that —

Q. Excuse me. Let me stop at that point. Would you explain that, your last remark again? That they would be — this call ahead?

A. If my memory serves, somewhere in the correspondence between myself and Mr. Moake he was saying their organization would be glad to call ahead to let the officials know they were going be in town, and I did report that to the mayor and council saying, as I'm trying to draft an ordinance that will accomplish our goals and at the same time be acceptable to the Watchtower organization; there should be no problems because they will call ahead if they come.

Q. Was this communication with Watchtower and Mr. Moake occurring in the middle portion of 1998?

[154] A. It's during whatever this correspondence time is from his first letter to September —

Q. The first letter that I am looking for in your writing is April 17, 1998.

A. Which exhibit was that?

Q. Exhibit 17.

A. 17.

Q. Does that help refresh your recollection?

A. Well, he had to write me one before this because I'm referring to his letter of April 10. I'm responding to it, but let me see — I know for a fact it's somewhere in there. Let's see here. Look at his April 27, 1998, letter. That's your Exhibit 18.

Q. Yes, sir.

A. It's addressed to me, and we are already into this correspondence now. The last paragraph on the first page of his letter says, "In many communities in this country, as a courtesy to local law enforcement personnel, Jehovah's Witnesses voluntarily give the municipality advance notice by telephone that they would be conducting door-to-door ministry on a particular date and in a particular area. As a way to resolve the current matter in Stratton, our local congregation would be willing to contact the village police department by telephone before conducting door-to-door ministry in the village. The caller would state the [155] approximate time that such ministry would take place, the approximate number of people involved and the general

location where they would be. In this way your police would be aware of their activity on that particular day in question. If the village would agree to this approach, then the issue of whether or not section 116.01 is unConstitutional would not need to be determined."

And then he says, to indicate our good faith in this matter until we hear back from — me, he will — we will advise our local congregation not to conduct door-to-door activity in the village and to restrict ministry activity to visiting residences to which they have been invited.

Now I'm pretty sure that it's this that I am thinking of when I have in my memory, where I was reporting to the village officials, while we're working this out, there won't be a problem. People from the Jehovah's Witnesses organization will call in advance.

Q. You were present in the courtroom during the testimony of Tammy Tuckosh?

A. Yes, sir, I was.

Q. And that occurred after the — you heard the events which she discussed, as to 1998, were going on or about the same time as your communications with Mr. Moake, is that correct?

[156] A. Yes, sir. I think almost exactly at that time. It was before this ordinance in question had been passed, she had her incident, but right about the time I was understanding nobody would come without calling in advance.

Q. And that information had been communicated to the mayor?

A. It was communicated by me to the mayor and the council, that they would call before they come.

You were asking me about what we discussed during the legislative drafting process.

Q. Yes.

A. There was more.

Q. Okay. What more?

A. Well, we discussed the need for the ordinance, the types of problems, the typical scenarios of the flimflam man, but even the legitimate people, the annoyances caused when they come after dark or during the dinner hour, and discussing what would be the best way to regulate, at the same time I was trying to educate the officials on Constitutional issues and the fact that we had to treat everybody equally and make permits available easily and those sorts of things.

Q. Did you make a broad statement to council concerning who could apply and receive such a permit?

A. Yes, sir. I was trying — Right at the end, when we [157] were in the act of passing, either when we sunshine-ed this legislation or when we passed it, I remember making a big speech on the council floor to say — to pound home this point. I said something almost exactly like this. Let's get

this straight. When the little pig-tailed, freckle-faced girl scout comes to sell girl scout cookies, she gets a permit. And they all shake their heads. Then I say, when the Nazi party comes and asks for a permit, they get a permit. The girl scout with the pig tails is the same as the Nazi party, same as the Ku Klux Klan. Everybody gets a permit. And the only thing they have to do is complete the form. And I used the phrase "a completed information form is an automatic trigger." And I think I used the same phraseology to Mr. Moake. The completed form — We are not going to decide: Are you bad? Are you good? If you complete the information, it's an automatic trigger. You get the permit in the absence of fraud.

Q. What does the word "fraud" mean to you?

A. Falsehood, misrepresentation, lying in some material way.

Q. Did you explain to council what you meant by that provisional thing?

A. Yes, sir, and I think I gave examples.

Q. Did you also explain to the mayor what his rights or [158] responsibilities — and responsibilities would be with regard to fraudulent activity and fraud in the making of an application?

A. Yes, sir, and I would consider it more than explaining. I think I pounded away at the fact. Give them a permit, and then unless it's very clear to you that there is some fraud here, you just give them a permit, and we're going to leave it up to the property owners to make their own decision, and

we are not going to listen to the property owner cry if he failed to avail himself of his right.

Q. Are you familiar with phone calls being made by citizens of the village concerning people walking through the community?

A. Yes, sir.

Q. How are you familiar?

A. Because it happens all the time. You experienced it. The first time you came to town with Ms. Brey to meet with us, before we got to the municipal building there had been at least three, maybe five calls that there were strangers in town walking around, and people were worried and wanted to know who they were and wanted the mayor's office to check it out.

I can't think of an exception, maybe one got by; but where the solicitor type canvassers, the salesmen or [159] the Jehovah's Witnesses or anybody has gone door to door in the town, there are always calls to the mayor. The mayor's phone lights every time, and so does the chief of police. They are not always complaints that they want them arrested, but the phone lines light up. If there is a stranger in Stratton, the mayor gets a call.

MR. CANTOR: One moment.

BY MR. CANTOR:

Q. You have had some discussion today concerning fraud in the Village of Stratton itself. As the solicitor, the prosecutor, of the village do you have information that you shared with council concerning fraudulent conduct or schemes or difficulties within the Ohio valley that might cause a problem within the village?

A. Yes, sir, I discussed with the mayor and council on several occasions, as a matter of fact occasions throughout the years even before this ordinance was in effect, not only in general how fraud occurs but specifically how it's occurred with examples in the Ohio valley; and then lastly I have a recollection of instances in the Village of Stratton.

Q. Let me ask you how do you know about instances in the Ohio valley? How is that made known to you?

A. The best way that I can recollect is periodically there are alerts or reports on the news where one of the [160] police departments from one of the towns reports there are two guys going up and down the valley. Here's their MO.

Well, the day my — the day before my deposition was taken in this case there was exactly that kind of report. TV 9 had a report that two guys were going from south to north, from Wheeling, had been to then the Weirton/Steubenville area, were proceeding north directly to Stratton, posing to be in the construction business. One guy would distract the homeowner, talking about, well, we can fix your roof, or do this or that, while the other guy would go through the house

and grab cash or items of value and steal it. So those were the general kind of alerts that we have gotten over the years through the news media.

There are alerts we will get through the sheriff's department, be on the —

Q. Which sheriff's department are you referring to?

A. The Jefferson County sheriff's department. I personally know things that have happened outside of Stratton, like in Steubenville where I live, but also instances in Stratton itself.

Q. Let's talk about that. How far is Steubenville from Stratton?

A. About 12 miles. It takes me about 10 to 15 minutes to get to council meetings.

[161] Q. So the record is clear, the Ohio valley means what?

A. The Ohio valley to me means the southeastern portion of Ohio along the Ohio River where it borders on the northern panhandle of West Virginia, as far south as Wheeling, West Virginia, up to East Liverpool, Ohio.

Q. Now those instances that you have recounted in Steubenville and the village?

A. Well, we had one — It's hard to do them in order, but I clearly recall a incident in the village within the last year or year and a half, like a 93-year-old citizen had these people

come in, claim to be in the construction business. They said they had noticed defective tiles on his roof that would cause leaks, and they would repair them for $10 a tile.

They were on the roof in progress when either the mayor or the chief, and I forget which, arrived — and I can't remember if he was called to arrive, but he arrived. When he was told that these people were going door to door offering this service, he asked them if they had a permit. I believe this was one of the instances where the guy claimed, because we have had instances where they will look the mayor right in the face and say, yeah, I got a permit from the mayor, not realizing they are talking to the mayor, and then jump in their car and speed out of town.

But in this case, when advised they needed a [162] permit to do that, they jumped in their truck and took off; and I think the Wellsville police department apprehended them later, and they turned out to be what the Wellsville police department reported as gypsies, were going up working this scam where they were taking advantage of the elderly citizen by overcharging him for a bunch of construction that he didn't need.

We have had the blacktop salesmen that the mayor may have mentioned. We have had cases where — There was a Bible salesman. Oh, the perfume salesman. We have a citizen in town that — I am not sure the way to say it. Let's say he doesn't have the education that a lot of people have or the acuity that comes with education, that was taken advantage of by a guy purporting to be a perfume salesman, and he gave him some little worthless bottle of perfume for like $45

or $50. He complained or his family complained and the mayor had to go down to attend to that, and I think he worked a refund for that guy.

There have been other instances I am sure, and I am sure it will come to my mind.

* * *

[165] . . . five different incidents involving unauthorized solicitations as contained in the records of the Village of Stratton. Do you recollect that in your testimony, sir?

A. The ones that I pointed out from the police reports?

Q. That's right.

A. If there were five, yes, I wasn't counting.

Q. Those were the entirety of the records that the Village of Stratton has with respect to problems they have had concerning unauthorized solicitations, correct?

A. That would be the entirety of any on-paper record that I know of.

Q. Fair enough, sir. Now the chief law enforcement official in the Village of Stratton is Michael Wilson?

A. That's the chief of police, yes, sir.

Q. Is he the sole law enforcement individual in the Village of Stratton?

A. We have an auxiliary police officer that pinch hits as a relief police officer.

Q. Isn't it fair to say that he has the primary responsibility for law enforcement in the Village of Stratton?

A. Yes, and specifically in this ordinance, this ordinance refers to the chief, as the person who goes out and abates the nuisance.

Q. Thank you. He's sitting outside right now, isn't he?

[166] A. I don't know if he is or not.

Q. Was he here this morning?

A. Yes, I have seen him here in town.

Q. Have you seen him outside the courtroom this morning?

A. Yes, sir, I have.

Q. Did you ever receive a correspondence from Mr. Moake to the extent of thanking you for satisfying any Constitutional objections he had seen with respect to the ordinance?

A. I think he did like say, this was a good change. Thank you for doing that. That addresses that concern. I don't think he ever got to where he conceded the applicability of the ordinance to him. But at the end of the correspondence I was clear that I had satisfied all his Constitutional objections to the ordinance, and I do think there were actually places in

there where he complimented us and said, that's really good for the First Amendment.

Q. I am not suggesting, sir, that any modification you made to the prior ordinance is inappropriate. What I am asking you is a slightly different question, sir.

A. I am sorry.

Q. I apologize. It may be the framing of the question, sir. Did you see any correspondence from Mr. Moake where he said to you with respect to ordinance 1998-5 that it satisfied all of his Constitutional objections?

[167] THE COURT: I've read the letters —

MR. POLIDORO: Thank you. I will move on, judge.

THE COURT: Some modifications were made to satisfy; some were not.

MR. POLIDORO: Thank you, judge.

BY MR. POLIDORO:

Q. Sir, wouldn't five o'clock be an appropriate time to find individuals at home if someone was canvassing from door to door?

A. Yes, I think you would find them at home at the dinner table.

Q. If an individual Jehovah's Witness himself worked from nine to five, how would he reach members of the Village of Stratton under your ordinance?

A. I think he would do it on his days off from work since you can do the town in — seven days a week.

Q. Could you explain, sir, how you believe that someone speaking about the Bible in the Village of Stratton falls under ordinance 1998-5?

A. On that narrow hypothesis, it doesn't. You can stand on the street and speak about the Bible. You can go to any one of a variety of locations in Stratton that are accessible to the public and not on somebody's private property and speak about the Bible. Essentially if you are lawfully in any place, you can speak about the Bible to [168] your heart's content.

Q. Thank you. Could you explain to me, sir, how someone going from door to door in the Village of Stratton merely speaking about the Bible falls within the ambit of ordinance 1998-5?

A. Without more information, it certainly falls within the ambit. It's because if they are going from door to door, they are canvassing within the ordinary plain meaning of that word and within the Webster dictionary meaning of that word. Number two, if they are going on private property un-invited — which you didn't say, but can I assume that? If they are going un-invited, that's bringing them within the scope of this ordinance. And if they're going there canvassing un-invited onto private property to advocate the religious cause or to explain the Jehovah's Witnesses organization or

the services and so forth, they would be within the ambit of the ordinance.

Q. I have think you have changed the question slightly. Suppose an individual wishes to go door to door merely to state, I want to share with you today John 17:03. This means ever lasting life. They're taking in knowledge of the all powerful God. That's the only thing they want to say.

A. Yes, sir.

Q. Do they need to obtain a permit in order to do that [169] in the Village of Stratton?

A. If they are doing that un-invited, yes, sir.

Q. How do they fall under the ambit of the ordinance if that's merely what they wish to do, sir?

A. There's a Supreme Court case, and I can't remember — name it for you, that says when you go door to door to talk about religion or distribute religious literature, you are, quote, soliciting, unquote. So I think he's soliciting within the meaning of this ordinance, too. I am sure he's canvassing within the meaning of this ordinance.

Q. Is it fair to say that canvassing is not defined under the ordinance, correct?

A. There is no legislatively expressed definition of the word in the ordinance.

Q. And apart —

THE COURT: As far as the language, though, canvassing really isn't one of the verbs they're using. It talks about people who are canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors. Then it says that they're in town for the purpose of advertising, promoting, selling and/or explaining.

There are really three components. One is who these people are in terms of what they are doing. That's the canvassing — whether they're canvassers, solicitors, peddlers, etcetera. The second part is the action verb, [170] promoting, selling and/or explaining; and the third is a product, service, organization or cause. I view this in three parts. I think the language of the ordinance is clearly in three parts.

MR. POLIDORO: Then maybe, Your Honor, if I might.

BY MR. POLIDORO:

Q. Using our hypothetical about the individual who merely wants to go to the door to share a Bible thought for the day, using His Honor's taking this 116.01 and breaking it down into three sections, could you explain how that individual falls within the ambit of the statute?

A. Yes. Within His Honor's first section he is certainly a solicitor and he's also a canvasser if he's going from place to place.

Q. How is that so, sir?

A. Because the plain meaning of the word "canvasser" is a person who goes from place to place for discussion. I am pretty sure that's also the dictionary definition, and I think it's the case law definition. The plain meaning of the word "solicitor" is a person who, whether he does it from place to place or in a single location, appeals to another person for some goal or for some thing; and I am very sure that I recall case law that says, when you're going for a religious purpose, you are a solicitor.

Q. I am sorry, sir, I didn't mean to cut you off.

[171] A. Then the second part, as His Honor breaks it down, is this person is explaining; and then the third part is what he is explaining, if it's a religious cause, we have got all three parts that put him within the ambit of this ordinance.

Q. I appreciate your answer, sir. What I am asking you specifically, an individual who just wants to share one Bible thought, how is that a cause?

A. A cause is a principle or a movement to include religious principles, to include religious movements, that is certainly the plain meaning of the word. That is certainly the dictionary meaning of the word. So when this person is preaching the Bible or this passage, he is promoting a religious cause.

Q. Sir, it is fair to say that you are aware of no statistics with respect to crime and door-to-door activity of Jehovah's Witnesses within the Village of Stratton, correct?

A. No, I think at my deposition I said I would know one which is a total number. There were five documented in the

police reports, and I think I told you from five to ten, somewhere, that would include discussions, not just complaints, that had reached the official record. But other than that, percentages and that kind of statistic, you're right.

[172] Q. Just so I'm clear, do you have any documentary evidence tending to show that one of Jehovah's Witnesses committed a crime while going door to door?

A. The only crime would be a violation of this ordinance. You mean other crimes, violent crimes, thefts?

Q. Anything apart from the violation of sharing the Bible without a permit.

A. Of the cases where a person in town turned out to be a criminal, I do not know whether any of them were Jehovah's Witnesses. They may have been. I don't know.

Q. It is true, sir, is it not, you are not aware of any violent crime resulting from door-to-door activity in the Village of Stratton, correct?

A. I can't specifically recall violent crime coming from door-to-door activity in the village. There may have been, but I can't specifically recall any.

Q. Is it also fair to say that you are not aware of any theft or injury crimes occurring as a result of door-to-door activity in the Village of Stratton, correct?

A. Not in the village, but approaching the village and around the village I am.

Q. But not in the village, correct, sir?

A. Unless you consider flimflamming a guy on his roof a theft. I am not counting that as a garden variety grab-it-and-run theft. But any kind of bilking a guy out [173] of money to me is a theft.

Q. Sir, do you have the book of exhibits —

A. Yes, sir.

Q. — the white book? If, Mr. Bruzzese, please, you could look at any of Exhibit 34s?

A. 34?

Q. Yes, sir.

A. I'm looking at Exhibit 34.

Q. Is that a no solicitation registration form?

A. Yes, sir, it is.

Q. I would ask you to take a look at the checklist appended to that form?

A. I am looking at the checklist with little boxes to the right. It says, allowed, at the top, and it starts out with, no. 1, scouting organizations.

Q. What is no. 4?

A. No. 4 says, children's solicitation for supporting school activities.

Q. And what is no. 6?

A. No. 6 says, Jehovah Witnesses.

Q. Do you have any understanding, sir, how the specific name of that religious group came to be on a form put out by the Village of Stratton?

A. No, sir, this is not part of the form that is legislatively created in the ordinance, and I don't know . . .

* * *

[176] * * *

BY MR. POLIDORO:

Q. Mr. Bruzzese, in your role as village solicitor, is it your opinion that there is a Constitutional right not to be annoyed in one's own home?

A. In my opinion there is a Constitutional right to be free from any state action that assists an intrusion into your home. Constitutional right, as I said in my deposition, protects you from government. It doesn't protect you from a private citizen independently annoying you as your common law and statutory rights do protect you.

Q. So it's your recollection in your deposition you did testify that it's your opinion that one has a Constitutional right not to be annoyed in their own home, correct?

A. My recollection is in my deposition I said one of the homeowner's right that I considered was a Constitutional right to property and a Constitutional right to privacy and also his common law rights of privacy and rights against trespass; and somebody, and I can't remember if it was you or Ms. Gellman, pursued the point on whether I believed the Constitution protected the homeowner against a private individual alone making these intrusions, and I think I said no, but that the village as a government couldn't have [177] a state action that assists him and pushes him or helps him go into your home because that's what the Constitution protects him against.

We couldn't give you a permit that says, you are allowed in my home no matter what I say. That would be a state action forcing me to let you into my home, and my Constitutional right to property and privacy would protect me against that.

Q. Thank you.

MR. POLIDORO: Do you have a copy of Mr. Bruzzese's deposition?

MS. GELLMAN: I have it.

BY MR. POLIDORO:

Q. Sir, I am going to begin please on the bottom of page 54. Just let me give a context to this, where it begins, "Do you

have a legal opinion, sir, whether that annoyance you described is sufficient to overcome an individual's First Amendment right to express opinions?"

After an objection by Mr. Cantor, your answer, "I don't think this ordinance purports to overcome some individual's rights to express his opinion.

Question: Excuse me —"

Top of 55 — "I have a Constitutional right not to be annoyed in my own home which I own as private property because I have my own Constitutional right to property, I [178] think I've got my own Constitutional right to privacy, and, thirdly, I don't think this ordinance overcomes anybody's First Amendment right to speech."

Sir, I am not addressing the right to privacy nor the right to property. I would like to look to your opinion, sir, with respect to a Constitutional right not to be annoyed in one's own home. Do you see that, sir?

MR. CANTOR: Objection, Your Honor.

THE COURT: I'm not sure it's even relevant, but I am going to overrule the objection at this point.

THE WITNESS: I do see that in this deposition, sir.

BY MR. POLIDORO:

Q. Could you explain where that right emanates from, sir?

A. The Constitutional right to property, the Constitutional right to privacy, the case law that says, indeed, a man's home is his castle free from intrusion by even the king himself, and that sort of basis.

Q. Thank you, sir. It's fair to say, sir, that it's your legal opinion that there's no real distinction between the First Amendment protection afforded commercial speech and that afforded religious speech; is that correct?

MR. CANTOR: Objection.

* * *

[180] Q. Mr. Bruzzese, I believe it's the second page here, section 116.03 hyphen 6.

A. 116.03.

Q. (B)(6).

A. I'm there.

Q. "Such other information concerning the registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." It's fair to say, sir, is it not, that may be reasonably necessary within the purview of this section of the ordinance is within the discretion of the mayor, correct?

A. No, sir. It is within the limited discretion as governed by the standard that's set forth in item no. 6. I have given him a standard that restricts him.

Q. But the interpretation of that standard, what is or is not reasonably necessary within section 6, is within the discretion of the mayor, correct?

A. Not solely. He's one of the persons who will make a decision as to whether he has what's reasonably necessary to accurately describe the nature of the privilege desired, the applicant is another one, and then on appeal under 2506 the common pleas court is one; and I guess I'm a person that will make that decision, too, if anybody is prosecuted under this ordinance, for failure to give such other information as is — So we all, each one of us, will make [181] that decision, but it has a standard that governs us.

Q. Sir, would you not agree that a no trespassing sign on a home in the Village of Stratton would serve to keep away unwanted door-to-door visitors?

A. I would certainly not agree with that.

Q. Why not, sir?

A. No trespassing signs have — Signs have failed to keep people from going door to door even where un-invited, to include our signs at the north and south ends of the village.

Number two, our system is more specific. When you look at a no trespassing sign and you are going to go door to door selling eggs, you think, well, I am not trespassing. I am an

egg salesman. But our system is better than a no trespassing sign. It says specifically, I, the property owner, don't want any salesmen coming to my door. So you get better information from that.

Number three, the no trespassing sign to me is one size fits all, and my experience has been that the property owner really doesn't mean that the pig-tailed girl scout cookie person is a trespasser when she comes to the door; whereas maybe the would be thief is.

But our ordinance lets the property owner clearly specify, in a way that's communicated to people, who is allowed to come on to my private property and who is not, [182] and it does that worlds better than a no trespassing sign.

Q. Sir, you and I discussed in your deposition trick-or-treat-ers on Halloween eve going from door to door would arguably fall within the ambit of the ordinance and be required to have a permit, correct?

A. I was asked that question, I think, and I don't remember what my answer was. I think a trick-or-treat-er would not be required.

Q. Why is that, sir?

A. Because as the judge breaks it down into three parts, one of the parts is the purpose, and this person is not promoting or explaining a product or a cause, just begging candy.

Q. Sir, could you look at any of what's listed as Exhibit 34?

A. In the black book or the white book?

Q. It's your white book, sir.

A. I'm looking at one of the no solicitation registration forms.

Q. Thank you, sir. If you turn to the checklist and look at no. 13, trick-or-treat-ers during Halloween season is listed. So arguably they would be required to have a permit to go door to door, correct?

A. Not arguably to me.

Q. Why is that, sir?

[183] A. I didn't create this checklist. I don't know the thinking of the person who did. To me it is an extra piece of paper appended to a form that I created and that is legislatively created in the ordinance. If you get to me and you're in mayor's court and you're prosecuted for trick-or-treat-ing, I think I say that you don't need a permit unless you are, when you are trick-or-treat-ing at the door, advocating some organization, product, cause, you know, the things that are in the ordinance.

Q. Is it fair to say, sir, that you are aware of no prosecution of trick-or-treat-ers in the Village of Stratton, correct?

A. That's exactly fair to say. You know what? On your no trespassing sign, I didn't quite get finished. Another thing a no trespassing sign is, it doesn't give law enforcement any information. We start out with evidence you have to go on,

after you're gone from the town and it turns out you are the flimflam man or that you are the thief, the no trespassing sign doesn't give the police or the village officials any handwriting, any ID, any MO, your modus operandi, to either alert other towns along the way or to start as a starting point to track you down in the criminal identification process.

Q. You mentioned three things there, sir, and you are speaking about the permit.

[184] A. No, no, you asked me: Wouldn't a no trespassing sign just serve as well?

Q. Right.

A. My answer is: Clearly not.

Q. Because your statutory scheme provides for the issuance of a permit to go door to door, correct?

A. It does more than that. That's one of the things it does, yes.

Q. But I am addressing your point with respect to handwriting, MO and identity. Those are your three points, correct, that would be derived from a permit?

A. There certainly are others. There is the face of the guy who walks in. You get — the clerk gets to see his face.

Q. But the face would also be available to the homeowner who the fraud was perpetrated on, correct?

A. Yes.

Q. And the homeowner could also testify to the MO, correct? Modus operandi?

A. No, I don't think so. One isolated instance, when a guy comes up against the express desire of the no trespassing sign, you don't see the pattern.

Q. Let me ask you, sir, how does applying for a permit help to identify what a con artist's modus operandi is?

A. He fills out his stated, which we will later learn is [185] fraudulent, purpose right there in the registration form.

Q. But —

A. We don't have to argue later what he said. When there is an elderly, 86-year-old lady in court, and we're arguing what did he say to her or what did he not say, how did he represent himself, it's her against him. But we have an additional, at least one additional witness, the clerk who saw the guy. We have written evidence of what he represented himself to be. So when he says, I'm with the American Youth Organization, that's my affiliation, and he has to show some credentials, we have got something to go on to prove that you are not with that organization or there is no such organization, and, therefore, you may be a fraud.

Whereas this 86-year-old lady is going to have to remember, what organization did you say that you were affiliated with? What really did you promise to do? And you are going to be there, if we ever catch you, saying, I never

promised I was going to replace three shingles, and her roof was going to be fine for $10.

Yes, the homeowner is a witness. The more witnesses, the merrier; the more documentary evidence and identifying evidence that we have to go on, the better it is for law enforcement. I don't think anybody can argue with that. So I like the registration and the owner's [186] registration better than just the no trespassing sign.

Q. Are you aware of any case in the State of Ohio that's used handwriting in an attempt to prosecute fraud in door-to-door solicitation?

A. Fraud. In door to door? No. But I am aware, when I was doing criminal defense, of handwriting identifying being used in federal cases and state cases to identify the perpetrator of an alleged fraud. Yes, sir, I can.

Q. In door-to-door solicitation?

A. Not door to door, but just fraud in general.

MR. POLIDORO: Thank you.

THE COURT: I assume you are finished, counsel?

MR. POLIDORO: I apologize, judge. I am quite done.

THE COURT: Mr. Cantor, before you redirect, I have a few questions of Mr. Bruzzese which you may follow up.

Mr. Bruzzese, if I could turn your attention back to the first paragraph of the ordinance, 116.01, the plaintiff's black binder —

THE WITNESS: The black book.

THE COURT: My question first concerns the scope of the coverage. Do you interpret the statute — excuse me, the ordinance to include persons coming into the village, for example, and going door to door on some type [187] of political campaign?

THE WITNESS: Yes, if they are going un-invited onto private property for their political campaign or political cause, yes, Your Honor, I do.

THE COURT: May I conclude also, I assume you would as well if they are barred after five o'clock in the evening?

THE WITNESS: Yes, Your Honor, on a separate ordinance. You directed me to .01.

THE COURT: That's just a definition of who would be covered.

THE WITNESS: Yes.

THE COURT: But another covers the time of day?

THE WITNESS: Yes, sir, that's .05.

THE COURT: Is it also your interpretation of the ordinance, and this would be I assume under 116.03 and perhaps under .04 as well, that each person going door to

door who may be part of an organization or a religious group going through the village would have to register so long as each person is going door to door?

THE WITNESS: Yes, Your Honor.

THE COURT: A group couldn't register as a group. Each individual has to register. It could be part of the same application, but they would all be listed on the one application?

[188] THE WITNESS: List them all on the same form, but we want everybody to have the permit in his hand so each one can exhibit that permit. It has to be exhibited in case there's any question about: Are you part of this group, or are you just following this group around? And maybe you're somebody else.

THE COURT: That's all the questions that I have.

Mr. Cantor, if you wish, you may redirect.

MR. CANTOR: One moment, Your Honor.

Thank you very much, Your Honor. Thank you, Mr. Bruzzese. No further questions.

THE COURT: Any further questions?

MR. POLIDORO: Nothing, judge.

THE COURT: Thank you, Mr. Bruzzese. You may step down.

* * * *

APPENDIX O — EXCERPTS FROM TRANSCRIPT OF TESTIMONY OF HELEN MAC MURRAY, OHIO ASSISTANT ATTORNEY GENERAL DATED JULY 27, 1999

[commencing at page 206]

* * *

HELEN MacMURRAY

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BREY:

Q. Good afternoon, Ms. MacMurray.

A. Good afternoon.

Q. Would you please state your name?

A. Helen MacMurray.

Q. And whom do you work for?

A. Attorney General Betty Montgomery.

Q. In what position?

A. I am chief of her consumer protection section.

Q. How long have you been chief of that section?

A. Next month it will be four years.

Q. Four years. Could you tell us a little bit about your education and particularly just briefly your law [207] school education?

A. Certainly. I went to the University of Toledo, and I graduated in 1987. I then went into private practice for eight years, and then I have been working for the Attorney General's office for the last four years.

Q. And you have been a member of the Ohio Bar, I take it, since —

A. 1987, that's correct.

Q. Could you tell us what kind of work you do as section chief of the consumer protection section of the Attorney General's office?

A. Certainly. The consumer protection section at Attorney General Montgomery's office is charged with enforcing all of Ohio's consumer laws, and we have a section of over 90 individuals of whom I am the chief administrative officer. I am responsible for all the labor and employment issues. I am responsible for all the enforcement legal actions that are filed. There is an investigative unit that I oversee as well, and then we have a very large complaint mediation unit and consumer education and outreach division as well, and I am responsible for all those individuals, for the programs that go in all these areas as well as I do media myself, I do frequent speaking, everything that needs to be done to get the word out to protect consumers.

[208] Q. And what types of thing have you spoken on and where? Just give us some examples.

A. Sure. Recently the Consumer Union celebrated its 100th anniversary, and I spoke to them on telemarketing fraud. A couple months ago I was in Canada with the Solicitor General of Canada against Boeuf Monde International cross border issues. I have spoken to the National Association of Attorneys General on Internet fraud as well as telemarketing fraud. These are all national conferences. And I speak constantly throughout the State of Ohio to small and large groups alike.

Q. Okay. Have you ever made any appearances in television and radio?

A. Yes, our section was responsible for passing the first criminal telemarketing fraud law in the United States, and Diane Sawyer with Prime Time Live decided to make that the focus of an undercover operation, and I participated in the undercover operation with her news crew, and we had actual fraudulent telemarketers calling me. All of that was then revealed to the telemarketers, and in fact resulted in a number of them going to jail.

I also have probably a dozen of the major either television or newspaper markets have either interviewed me as part of their stories or my cases have been part of them, the Wall Street Journal, the New York Times, some of [209] the — Dateline NBC has done a show on one of our cases, probably a good dozen or so national publications have featured our work.

Q. In addition to your speaking engagements and your work in the section, in the consumer protection section, do you conduct any training of any groups with respect to protecting against consumer fraud and other related consumer problems?

A. Yes. As a matter of fact, I just finished a year tour, if you will, throughout the United States training law enforcement, prosecutors and sheriffs, deputy sheriffs, those type of people, in telemarketing fraud and Internet fraud issues. I have also again spoken throughout the State of Ohio to various groups and been very active in training, especially for law enforcement.

Q. I am going to ask you now, if you could very briefly, if you would look at the white exhibit book beside you there, and if you would turn please to Exhibit 38? Do you see that? Have you seen that document before?

A. Yes, I have.

Q. Can you identify that for us please?

A. That is a copy of my resume or curriculum vitae.

Q. And roughly how many pages is that there?

A. It is a three-page document.

Q. Very good. Does that reflect the experience and [210] activities that you have talked about today?

A. Yes. The only difference is that I indicated in my resume 80 members, and there's actually 90 members. I didn't send you an updated copy. I apologize.

Q. That's quite all right.

Ms. MacMurray, what areas specifically does the field of consumer protection cover? Could you give us an idea?

A. Any good or service that a consumer can purchase for personal use is covered by the consumer laws that I enforce. So that is automobiles, there is home improvement fraud, there is telemarketing fraud, it is sweepstakes, it is the television that you buy at the Sun TV that goes bankrupt, just a variety of things.

Q. Does the consumer protection section then do any work in the area of door-to-door solicitation?

A. Certainly. A number of the ones that I have mentioned can kind of cross paths and be sold in door-to-door solicitations.

Q. Can you describe for us what the section does in regard to door-to-door solicitation? Understanding that that crosses a number of areas.

A. Sure. The Consumer Sales Practice Act, which is the primary consumer law in Ohio, as well as the Home Sales Solicitation Act, which specifically goes to some [211] door-to-door sales, are the two statutes that we would then enforce for door-to-door sales; and some of the items that

we see frequently sold door to door, probably our biggest area of concern is home improvement services. We have items being sold like vacuum cleaners and a variety of series like that, landscaping work. You don't see much of the Fuller brush man anymore, but certainly more in terms of services provided to the consumer.

Interestingly enough, now that the Ohioans have a choice of who their natural gas providers are, several companies have chosen to sell their natural gas and switch providers by door-to-door sales. So really it can be anything and everything.

Q. And just for a point of clarification, your office, does the work that you do concentrate in specific areas of Ohio?

A. Oh, no. You mean with regard to the enforcement actions that we take?

Q. Yes.

A. We're statewide in terms of where the complaints come from, and in fact the businesses that we regulate can be all over the United States, and in fact we do do a fair bit of international prosecutions as well.

Q. You talked a little bit about some of the problems that are brought to your section's attention and relate to [212] door-to-door solicitations. Are there others that, other types of problems, that might come, fall under the rubric of the door-to-door problems?

A. There's a multitude of different products that we see out there that are sold door to door. Some of it borders more on the criminal intent where you have someone come to the door, keeping you engaged in conversation, and someone coming in your back door and taking your valuables. That may or may not fall under our jurisdiction. Sometimes we work hand in hand with local law enforcement when it's kind of a dual support like that.

Q. Based on your knowledge and experience as a section chief, is there a particular group or groups of people who may be more susceptible to consumer fraud and other consumer types of problems?

A. In my experience we have noticed that today's scam artists tend to focus on the most vulnerable populations, and we find those to be senior citizens and people with low education and low income levels.

Q. When you talk about senior citizens or the elderly, could you give us an idea age-wise what you are talking about?

A. Well, we don't really have a set age range. I think that maybe 50 and over is a general assumption. However, we also take into consideration when individuals may be [213] disabled or may have other things that make it more difficult for them to be able to enter into consumer transactions.

Q. What you just said about the elderly and/or senior citizens, does that hold true for door-to-door solicitations as well?

A. Most certainly. Because in fact senior citizens are the ones who are typically home nine to five. So I think in fact a higher

percentage of them fall victim to door-to-door kinds of solicitation because they are there. Same with telemarketing fraud, they are there to answer the phone.

Q. What are some of the particular characteristics that you have noticed in some of the enforcement actions that your section has taken in the door to door, other areas that form the basis of your view on the elderly being particularly susceptible?

A. Just in regards to the cases that we see, especially the ones that are most egregious, they almost entirely seem to be senior citizens. In my travels throughout the country, in participating in seminars, in listening to other individuals speak, again what seems to be prevalent throughout the United States with the door-to-door solicitations that the intimidation factor again seems to make the senior more vulnerable; and because they are more [214] vulnerable, they seem to be attacked more often. So they seem to be targets.

Q. Is there a difference there between door to door and telemarketing from that standpoint?

A. Actually they're similar. However, as much as I think seniors do have a hard time hanging up the phone, a lot of times on the door-to-door solicitation, in fact one of the reasons the Home Sales Solicitation Act was implemented was because once these people are in your home, we still hear stories about them staying there three, four hours, and senior citizens being unable — being intimidated by the individual, and they don't want to be rude, and they have a hard time getting the person to leave.

Q. Ms. MacMurray, I am going to ask you now, if you would, to look at, I believe it's in the black exhibit book, at Exhibit 1 in there. Have you seen that before?

A. Yes, I have.

Q. And what is that?

A. That appears to be the Village of Stratton's ordinance with regards to un-invited peddling and solicitation.

Q. And that's something that you reviewed in preparation for your testimony today?

A. Yes, I did.

[215] Q. Have you also reviewed the complaint in this case?

A. Yes, I have.

Q. Ms. MacMurray, I would like you to listen to some facts, and assuming those facts to be true, answer some questions based on your expertise. I am going to give you some facts and assume this would be characteristic of the Village of Stratton.

Assume a village of roughly 278 people, the majority of whom are elderly, which is to say over 55 and that age range. This is a village located in Ohio, very near to the West Virginia border, probably no more than 15 miles from West Virginia, probably closer than that, around 60 miles from Pittsburgh, and immediately adjacent to an intrastate highway, namely Route 7, and the Ohio River.

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In addition to looking at the ordinance, as I know you have, I will tell you also to assume that under that ordinance a person would carry but would not necessarily be wearing a badge, carry a permit but would not be wearing a badge, and the residents in question with respect to section 116, I believe it is .07, would be — would have the option of saying no to all solicitors, putting a sign on the door and also registering, of course, with the village, but saying no to either all solicitors or listing exceptions to that of individuals or groups they would like to have come to their place.

[216] So assuming all of that and having looked at the ordinance, based on your knowledge and experience as section chief of the Ohio Attorney General's consumer protection section, do you have an opinion whether an ordinance such as the one that you have before you would be helpful in combatting consumer fraud and related consumer problems in door-to-door solicitations?

A. Yes, I have an opinion.

Q. What is that opinion?

A. My opinion is it would indeed be helpful.

Q. Why would that be helpful?

A. Really for a variety of reasons. First is just preventive medicine. We spend a lot of time on consumer education trying to get the word out. Unfortunately, that always doesn't work. So if there were a registration requirement in a community, it's our experience that fraudulent, door-to-door

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solicitors will pass that community by. So in one sense it may avoid trouble before it starts.

Additionally, having the information, the solicitor's name and the additional things that are provided by this ordinance, again if a scam or fraud does occur, then the law enforcement or the investigators in my office would be assisted by that information.

Also one of the main things that seniors tell me [217] is that they can't tell who the fraudulent solicitor is from a good guy, and that's for a very good reason. Because con artists are very slick and very savvy and very nice, and the senior has a hard time telling. So if a permit was required, then the consumer would be able to know, one, if they had to sign up, if someone was at the door, they are going to know that they are dealing with someone fraudulent because they are disobeying the law; and, two, the fact they have a permit in their hand, the consumer who doesn't have a sign can ask to see the permit; and if they didn't have a permit, they will have a better idea of knowing who — this person is again violating the law, and they will have an easier time shutting the door.

Q. Very good. Would you say that door-to-door solicitations, do they still cause consumer harm throughout Ohio?

A. Very much so, yes.

Q. In what ways?

A. Oh, well, in a variety of ways. Right now our main priority in our section is home improvement fraud, and we find that

a significant amount of home improvement work is solicited door to door. In fact one of the more fraudulent groups out there are called the travelers or the gypsies; and in fact this group comes up to Ohio — In fact I just got a call from the Toledo area today — but they come up [218] to Ohio and various states, and they just sweep through communities, and they are — What they will do is knock on your door and say, we notice that the shingles on your roof are coming off or the blacktop needs work to be done; and what they will do is agree to do it for the consumer for a very inexpensive price, and they will perform the work, the blacktop is typically just a black paint that washes off, the roof shingles will fall back off, and the paint will wash off your house; and then frequently what they will do, the $200 paint job that you agreed to in the morning will be an $800 job by the end of the afternoon.

And they can be very intimidating. They focus primarily on communities just as you have described Stratton to be, and again they also focus on senior citizens, and they look for neighborhoods with the well-kept lawns and the little lawn ornaments and things that to them say they are senior citizens.

Q. Could I have you look again at the white exhibit book, not to confuse you too much, and look at I believe it is Exhibit 39.

A. Yes.

Q. And do you recognize the document that is Exhibit 39?

A. Yes, I do.

Q. Could you tell us what that is?

A. Sure. The investigators in our office work in [219] conjunction with law enforcement throughout the country, and this was material that we picked up from law enforcement in the southern part of the United States who deal a lot with information on the gypsies, the travelers, the various names that they are known by; and that is information that outlines some of what is seen traditionally throughout the country and here in Ohio with regards to these traveling groups that prey on you at home.

Q. Do these groups primarily stay in the state, or do they come from outside of the state?

A. There are circumstances where they do come from within the state. Years ago we had the Circleville tree trimmers make their way into the rural communities north of Columbus, but most frequently they come from the southern part of the United States. They winter there and come to visit us in the spring.

Q. You've talked about some of the consumer harm that can relate to the door-to-door solicitations. In that same exhibit book can I have you look at Exhibit 40?

A. Yes.

Q. Can you tell us what that is?

A. This was an inquiry run on our new computer system. It is basically a listing of every consumer complaint filed with our office in the counties of Belmont, Columbiana, Carroll and Harrison from the period of time of January 1, [220] 1997, to the date July 14 of 1999.

Q. Okay, and does that — First of all, tell us how the — You see a number of data fields there.

A. Right.

Q. What is the first column there in the data fields?

A. Solicitation.

Q. Okay. Has that column always been something that you have noted in that type of report?

A. No. My understanding is that, again, this a new computer system that can enter many more fields than we had available before, and the solicitation column is supposed to indicate the type of contract between the consumer and the solicitor. And just being able to look at in this way is brand new. We have never been able to do that before to my knowledge.

Q. Is that recent in the past year or the past —

A. The computer system has been in the last year. This frankly is the first time I have seen the report run this way. Frankly we are upgrading on a daily basis, and the reports are getting better and more comprehensive as the entire system is being utilized.

Q. Does the report that you have in front of you, is that for particular areas, or is that for the whole state?

A. Those are for four of the 88 counties in Ohio.

Q. Does that report in front of you support your opinion [221] that there's significant consumer fraud in Ohio from door-to-door solicitations?

A. Certainly it indicates there is door-to-door solicitation fraud occurring. Our office is not — has not been set up to be able to pull out statistics with regards to door-to-door solicitations before. So it does show some, yes.

Q. But it shows some by the listing. Are there others than what you see as a specific listing in the first column there?

A. I am sorry.

Q. For door to door?

A. There are two door-to-door solicitations that are cited in this report, yes.

Q. Based on your experience in your office, do you see a fair amount of door-to-door solicitation problems? Whether or not they are recorded in your computer system —

A. Sure.

Q. — as such.

A. Yes.

Q. Okay. Very good. In your experience as section chief have you ever seen any other type of a registration requirement at the local government level for would be solicitors?

A. Yes, I have.

[222] Q. And what type of setup is that?

A. Well, I'm aware that many municipalities have these type of ordinances. Specifically, I am familiar with ordinances that are enacted after national disasters when the Attorney General's disaster program has taken effect.

Q. First of all, what is the disaster program that your office has?

A. The disaster relief program was implemented after the Xenia tornado. Because of the amount of national press that the terrible tornado received, literally thousands of contractors came to the Xenia area from all over the country. Unfortunately what happened was the tornado victims were secondly victimized again by folks coming to rebuild the house and taking the insurance check and either doing slipshod work or taking the check and leaving; and we had thousands of complaints filed with our office afterwards and basically could do nothing because we couldn't find these people. We didn't know where they were. It was just impossible.

So after that we implemented a computer program, and after a disaster we offered to municipalities a computerized

program that goes hand in hand with a contractor registration requirement which they pass by ordinance. The ordinance requires for a certain time period all contractors to register and to provide [223] significant background information which then is plugged in our computer system and which we verify. It includes a criminal background check. It includes past bankruptcies, past action in consumer fraud. It's really very thorough, and it can be very helpful in having the bad guys to stay away to begin with; or if we do have a contractor who registers and there is a problem, we have a sufficient amount of information on him to go back on him.

In fact most recently we used it after the Cincinnati tornado earlier, and again we had hundreds of contractors, and it was amazing how many had criminal backgrounds that we would not have found out about but for this type of registration program.

Q. So would you say there are several types of benefit that can come from some type of ordinance that would require registration of would be solicitors?

A. Right. Like I said, actually similar to my answer about the Stratton ordinance, one, it prevents a lot of times the bad guying coming into town to begin with because they're afraid of registration; and secondly, it provides law enforcement and our office with some information to go after the individuals who may have committed a fraud.

Q. Having looked at the Stratton ordinance, as I know you have, are there any other mechanisms in the consumer protection area that allow a resident to prevent unwanted [224] intrusion into his or her home?

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A. Yes, the Federal Trade Commission's telemarketing sales rule.

Q. Would you tell us a little bit about that?

A. Sure. I believe in 1993 Congress enacted —

MR. POLIDORO: If I might note, I don't believe there is any issue in this case with respect to telephone fraud.

THE COURT: Counsel, I assume you are offering this testimony in rebuttal of the prior witness's testimony of the greater harm caused by telemarketing versus door-to-door solicitation?

MS. BREY: Well, that in part. In part it relates to a similar mechanism to allow a resident to say, we don't want an intrusion in the home, something that operates similar to that part of the Stratton ordinance.

THE COURT: All right. I will overrule the objection. You may answer the question.

THE WITNESS: The telemarketing sales rule allows consumers who don't want to receive telemarketing calls into their homes to, when they do receive a call, to be asked to be put on a do-not-call list, and the telemarketer is required by federal rule to obey that request. Also the consumer can write to the companies and ask ahead of time to be put on this do-not-call list so they don't receive a . . .

* * *

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[226] * * *

A. Well, my experience has been overall that all of the efforts of all of the consumer protection agencies in the country pales in comparison to the amount of consumer fraud that's out there, and it's my opinion that everything that can be done helps that problem even more.

For example, we talked about telemarketing, each year $40 billion is lost to telemarketers. That gives you some idea of the huge amount of dollars that are involved. So my theory is everybody helps as much as they can, state, local, federal, and we can make a little bit bigger niche in this huge issue.

Q. Thank you. If the Consumer Sales Practice Act was adequately enforced, would it address the problems with respect to door-to-door solicitation in the Village of Stratton?

A. Would you repeat the question please?

Q. Sure. If the Consumer Sales Practice Act was adequately enforced, would it address the issue of consumer fraud within the Village of Stratton as concerns door-to-door solicitation?

A. That would assume that you would be bringing about 100,000 lawsuits a year. If we did that, maybe.

Q. Are you familiar with how many incidents of crime or fraud emanate from door-to-door activity in the Village of [227] Stratton?

A. No, I'm not.

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Q. What evidence have you reviewed with respect to the population of the Village of Stratton?

A. I am aware of what Ms. Richards indicated was the population, and that is the extent of my knowledge.

Q. Have you reviewed a census?

A. No.

Q. Have you reviewed any — a list of the population indicating who resides in the village and their ages?

A. I have seen a partial list, yes.

Q. Was that the senior citizen list?

A. I don't actually — I don't think so. I think it was just a —

Q. Can we turn our attention to the Home Sales Solicitation Act? What in the Home Sales Solicitation Act would be insufficient to address the issues of consumer protection and protection of the elderly in the Village of Stratton?

A. Well, it does not provide the knowledge to the consumer as to who is a legitimate supplier and who is not. When somebody comes knocking at your door, they could theoretically comply with the Home Sales Solicitation Act, and yet fraud could still occur. So the problem is trying to identify who are the good guys and who are the bad guys.

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[228] Q. But the ordinance, 1998-5, wouldn't address that problem?

A. I think it would implement some preventive measures and investigative measures that would assist.

Q. But you are aware there is no mechanism of verification in order to obtain a permit?

A. I am.

Q. Is it fair to say you are not rendering any opinion as to the Constitutionality of this statute, correct?

A. That's correct.

Q. Is it fair to state that your opinion is limited to the fact that this ordinance would be helpful in the prevention of fraud and the protection of the elderly?

A. That's exactly what I'm saying.

Q. Why did you choose the word "helpful"?

A. That was a poor choice of words actually.

Q. But I think it was your testimony, and I think it was also a word that you used in your report and in the deposition, and I was wondering why that word?

A. Well, again I go back to the fact there are many things that can help; and if it is a help, then it is helpful.

Q. So if the Village of Stratton passed an ordinance — a curfew prohibiting anyone to be on the street from the hours of four in the afternoon to nine in the morning, [229] would you similarly believe that that ordinance would be helpful in the prevention of fraud?

A. What were the hours again?

Q. Four in the afternoon to nine in the morning?

A. Yes.

Q. Are you aware that the chief of police of the Village of Stratton believes that they have no problem with respect to transient crime groups in the Village of Stratton?

A. Am I aware of that?

Q. Yes.

A. No.

Q. If that fact were true, and let's accept for the moment that that fact is true, would that change your testimony?

A. No, not at all.

Q. Why?

A. Because one of the benefits that I felt was the fact that a registration ordinance existing tends to make those groups choose to go somewhere else. So just the fact that it's there would be helpful.

Q. I would like to make the record clear. What is the factual predicate upon which you're basing the opinion that you gave the Court today?

A. Well, I assumed the facts as indicated by Ms. Richards.

[230] Q. Apart from that, upon what are you basing your opinion?

MR. CANTOR: Objection, form of the question, Your Honor.

THE COURT: Rephrase the question.

MR. POLIDORO: Certainly, judge.

BY MR. POLIDORO:

Q. What serves as the factual predicate for the opinion that you are basing today? In your deposition you testified that it was general fund of knowledge.

A. Yes, it has been the experience of the complaints that I have seen in the Attorney General's office. It has also been my experience with regards to the journals, newsletter, articles that I read with regards to consumer fraud; and as I said, I am very active on the national and international fronts, and I attend many events where I hear of other states' experiences as well. We work prosecutions with many other states and some other countries as well. All of that is the information upon which I draw to render my expert opinion.

Appendix O

Q. Believe me, Ms. MacMurray, I don't mean this question to be demeaning to that experience, but apart from your personal experience, upon what else factually are you basing your opinion that you are giving the Court today? Any other pieces of evidence? Any other pieces of [231] information?

A. Well, I could say any home improvement or door-to-door case that I have read or heard or dealt with in my office.

Q. Anything else?

A. I think I refer in my deposition to an AARP study.

Q. That was on telemarketing, correct?

A. That was.

Q. Anything else?

A. I am sure there are probably many other little things out there that I might pull, but that is a good summary.

Q. Now can you refer to — Maybe we could look at that together — Exhibit 40?

A. Yes, I have it.

Q. Now is this fair to say that you asked that this report be generated for the purpose of this lawsuit?

A. That's correct.

Appendix O

Q. And an investigator from your office prepared this pursuant to your request?

A. Well, actually he made a request to my computer person, who one of her staff I'm sure put this together.

Q. Thank you. It's fair to say that this report does not address any door-to-door solicitation problems in the County of Jefferson, correct?

A. That's correct. Belmont, Columbiana, Carroll and [232] Harrison were the four mentioned.

Q. Are you aware of what county Stratton is in?

A. I believe it's in Jefferson County.

Q. Is there a reason that Jefferson County isn't submitted in this evidentiary foundation?

A. Well, my request to my investigator was the surrounding area, and he took me quite literally and gave me the surrounding area.

Q. And in that report that he prepared, had prepared and generated for you, Ms. MacMurray, it indicates 544 total complaints. Is that a proper way to put it?

A. That's exactly right.

Q. In reviewing this, there are two that are specific to door to door?

A. Well, my understanding is that that may not be entirely accurate.

Q. But in reading the language under solicitation, I see on page 1 under the category door to door, there are two, correct?

A. Yes, that's correct.

Q. Is there any other listing on this form for door-to-door solicitation problems out of the 544 that were generated?

A. I have been told that because the solicitation field is brand new, that it has not been the practice of my [233] complaint specialist to note the type of solicitation and that they may or they may not have.

So in fact I have been told that to get an accurate figure would be impossible. I think I indicated in my deposition that our ancient computer system, which we are slowly trying to update, just unfortunately was not able to give us statistics with regard to accurate door-to-door solicitations.

Q. Maybe my question could be a little better put. Is it fair to say that the report that your investigator had procured for you from the resources of the Attorney General's office specifically indicates only two complaints from door-to-door solicitation from January, 1997, to the present for the counties that were surveyed?

A. It would be accurate to say there are two door-to-door complaints listed in the solicitation field. I can't say there are only two door-to-door complaints.

Q. Fair enough. Thank you. You had spoken earlier about the disaster relief provisions, statutory provisions?

A. Yes.

Q. That's limited to home contracting, isn't that fair?

A. No. It can also include commercial work as well.

Q. But apart from commercial and home contracting, it has no other applicability, correct?

A. Not to my knowledge, no.

* * *

[235] Q. But money would be part of that transaction ultimately, correct?

A. Yes.

Q. Okay.

A. Well, actually I take that back. I'm sorry.

Q. I didn't ask the next question fast enough.

A. We do deal with privacy violations.

Q. How so? Do you deal with privacy violations apart from funds?

A. Primarily because we have jurisdiction under the FCRA, the Fair Credit Reporting Act, and that concerns how your

name and information can be used back and forth. So you may not have lost anything monetarily, but just the improper exchange of information can result in a violation under that act, and we do have jurisdiction to enforce it in federal court.

Q. Now could you explain for us, please, why it's your opinion that a permit is needed in the Village of Stratton for an individual who wants to go door to door merely to discuss ideas?

A. I said that a permit would be helpful because, again, we try to give consumers, especially senior citizens, a bright line. When there is a bright line as to what is the law and what is not the law, and somebody is not obeying the law, again they are going to have a better idea who is [236] legitimate and who is not.

The second goes to behavioral concerns. Unfortunately, we find certain individuals, again many of them senior citizens, when they are in the habit of talking on the phone or answering the door to solicitors, that they become comfortable with this interchange; and unfortunately, that type of person is going to be most prone to the fraudulent either telemarketer or person at the door because they are used to engaging in those types of behaviors.

So, for example, when we have a particularly bad problem with telemarketing fraud, our number one recommendation is to disconnect the phone and get a new phone number. Unfortunately, you can't get a new home every time you have problems with door-to-door solicitations. So sometimes extra measures are necessary.

Q. Let's assume for the moment I'm elderly, and elderly is over 50, correct? Basically?

A. Depending on your mental state.

Q. I just did that for Mr. Moake's benefit. Let's assume —

A. I already insulted him in my deposition. I apologize.

Q. I want to go on record, he said I was 51. I'm not.

Let's assume that I am elderly, and I'm in the [237] Village of Stratton. Wouldn't an effective bright line be a no trespassing sign on my door? That as an elderly person I would know that no one is supposed to come to my door. Wouldn't that be a similar bright line?

A. Only to the effect that you have knowledge of that that is something that they are required to comply with. If it's just something that you've voicing your preference and they still come to the door, then that may not work; whereas if they know there are actual municipal potential penalties that could be assessed, this would again be helpful.

Q. We're speaking of a bright line for whom? When you say a bright line, for the elderly resident or for the door-to-door canvasser?

A. For the elderly resident.

Q. It's fair to say that you're not aware of any involvement of gypsies in the Village of Stratton, correct?

A. Yes.

Q. It is also fair to say that you are not aware of any fraud perpetrated against the elderly or otherwise from door-to-door solicitation in the Village of Stratton?

A. That's correct.

Q. It is also fair to say that you are not aware of the activities of travelers in the Village of Stratton?

A. Yes.

* * *

[240] A. Those were examples that I gave to her, and she is just reminding me to include them in my report.

MR. POLIDORO: Thank you very much. I thank you for your courtesy today. Could I have a moment, judge?

THE COURT: Yes.

BY MR. POLIDORO:

Q. With three lawyers, there are a few more questions please.

Is it fair to say there are no statistics to support your opinion about the effect of registration on the prevention of consumer or elderly fraud, correct?

A. We don't keep those statistics, you're right, yes.

Q. And it's fair to say there are no statistics to support your opinion about the effect of registration on the investigation of consumer or elderly fraud, correct?

A. We don't keep those statistics, no.

Q. What is your opinion about the effect on consumer fraud of a municipality that provides the names and addresses of all the residents in its village to anyone who asks?

A. That's purely a matter of public record, and you would be amazed how that information is bought and sold on a daily basis.

Q. A record of each and every homeowner, name and address in the village?

[241] A. What kind of food they like and what type of television shows they watch. It's a big business.

Q. Is it your experience that municipalities in the State of Ohio provide that on a routine basis to anyone who asks?

A. The division of motor vehicles does. There are many lists that are public records that companies ask for frequently unfortunately, and this information is common knowledge.

Q. Fair enough, but I am being a little more specific here. I am not speaking of the department of motor vehicles. I am speaking about the municipalities themselves, the Village of Stratton particularly. Do you have an opinion about the effect on consumer fraud of the Village of Stratton providing to

anyone who asks the names and addresses of all the residents of this village?

A. I guess — I don't understand.

Q. Maybe I can show the exhibit, and we can look at it together please. It would be in the white book please.

THE COURT: Exhibit 33, counsel.

MR. POLIDORO: Thank you, judge.

BY MR POLIDORO:

Q. 33 please.

A. Your question?

Q. Do you see 33?

[242] A. Yes.

Q. It appears to be a listing of, a street address listing of names, addresses of every resident in the Village of Stratton. Do you have an opinion as to the effect on consumer fraud of the Village of Stratton providing this list to anyone who asks?

A. Yes.

Q. What would that opinion be?

A. My opinion would be that this is information that probably most suppliers have on a regular basis and, therefore, there would be no additional — there would be no harm.

Q. None at all?

A. Not in light of the fact that it's a public record and it's used day to day I assume.

Q. Does that implicate any privacy considerations in your mind?

A. Well, again in my office we're real keen on public records, and this is a public record. So, no, there are not.

MR. POLIDORO: Fair enough. Thank you very much. Thank you, Your Honor.

THE COURT: Thank you, counsel.

You may redirect, counsel.

[243] REDIRECT EXAMINATION

BY MS. BREY:

Q. You were asked a few moments ago on cross-examination about whether there are certain statistics on consumer fraud. Ms. MacMurray, do you need statistics to render an opinion whether an ordinance, such as the Stratton ordinance here, would be helpful to combat consumer fraud?

A. No, I don't need statistics. I need to go to Dayton and view a woman's home that has been demolished and the hole that's been left when the contractor takes off. I mean I see that type of harm on a regular basis, and I hear about it on a national basis. When you see that happen to even one 80-year-old woman, you don't need statistics to tell you that it's a huge problem.

Q. In this case you mentioned about the 80-year-old woman in Dayton. Would you tell us a little bit more?

A. Yes. She had a fire to her home, and a door-to-door home improvement contractor approached her at her front door and said that the home needs to be demolished, and I will take care of it. So she took her $40,000 insurance check and gave it to this individual. He came back, dug the foundation and was never heard or seen from again.

The consumer's home was then put in Court order because she had created a public nuisance, and they were threatening to put her in jail. She comes to my office [244] with this sad story, and we were able to hunt this fellow down, and we did obtain an injunction against him, and he was forced to come in, and he's being made to do the work and working on paying the woman back her money.

Q. You were asked also, I believe, about whether you were retained for the purpose of testifying today.

A. Yes.

Q. I want to clarify for the record, were you paid a fee for coming today?

A. No, no. Under the Consumer Sales Practice Act we are charged statutorily with conducting consumer education and outreach. So that's what I do.

Q. So you're here with the Attorney General's permission today?

A. That's correct.

Q. When you talk about, just now you mentioned about the outreach and education. I think you also said that's helpful in dealing with, talking with the elderly and other folks about the consumer problems that are out there, is that correct?

A. Again prevention is a major key. In fact we are turning more and more nationally away from the trend of doing the legal enforcement actions and trying to put more dollars into consumer education to try to prevent the harm before it occurs.

* * * *

APPENDIX P — EXCERPTS FROM TRANSCRIPT OF CLOSING ARGUMENT OF APPELLEES — VILLAGE OF STRATTON DATED JULY 27, 1999

[commencing at page 272]

In *ISKCI*, Your Honor, that's the airport case as we know it now, that there was in fact a ban upon Krishnas from the internal operation of the airport, and then they were taken to the outside or to the sidewalk. At that time the Court identified there may have been a small change, a small change of those individuals who would otherwise have been given the opportunity to contribute.

In the ISKCI case, the fact pattern identified is that the intention to donate was actually apart of the religious mantra of the organization. So we are now in a situation where the federal government is moving someone from that which they have to do as a result of their religious organization, make them move outside; and they saw there was a high percentage that would still be attracted to them.

The analogy in the Stratton situation is that out of the 280-or-some-odd homes we have 20, 21 who have identified they don't want to be bothered. The rest of them are entitled and wish to be serviced, and they all could be reviewed because all of them must go to the post office on a daily basis.

THE COURT: Do you find any Constitutional problem with the form that singles out one religion for a check box, and no other religion is mentioned on the form?

Appendix P

MR. CANTOR: Your Honor, that check box also [273] identifies a special place for information on the bottom of any other churches that someone did not want —

THE COURT: None of them are not listed by name.

MR. CANTOR: No, Your Honor, there isn't; and that may have had something to do with the frequency of the calls rather than — That particular form specifically also identifies the police on that form. They are in the same category with police, same category with carolers, with trick-or-treat-ers. There is no indication on that form that one is preferred over the other. It is merely a listing of those groupings that come frequently to the household. So there has not been a .singling out with regard to that particular faith.

THE COURT: Note my disagreement that they haven't been singled out. They are the only religion listed on the form. That's my definition of being singled out, counsel.

MR. CANTOR: Yes, Your Honor.

THE COURT: Let's go to the next issue.

MR. CANTOR: We are suggesting to the Court that the — this ordinance must be reviewed through intervening scrutiny because the state may enforce the regulations of time, place and manner of expression when there is a content neutral legislation. It must be narrowly tailored to serve a significant interest. In this instance the interest that is being tailored to is the privacy of the . . . .

* * * *

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IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

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69 pp

QUESTION PRESENTED

Does a municipal ordinance that requires one to obtain a permit prior to engaging in the door-to-door advocacy of a political cause and to display upon demand the permit, which contains one's name, violate the First Amendment protection accorded to anonymous pamphleteering or discourse?

STATEMENT PURSUANT TO RULE 29.6

Petitioners' Rule 29.6 Statement was set forth at page ii of the Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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Coleman v. City of Griffin, 189 S.E. 427 (Ga. Ct. App. 1936), *appeal dismissed*, 302 U.S. 636 (1937) 5

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LOWER COURT OPINIONS

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001). The opinion of the United States District Court for the Southern District of Ohio is reported at *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 61 F. Supp. 2d 734 (S.D. Ohio 1999).

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on February 20, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND ORDINANCES INVOLVED

The First Amendment to the Constitution of the United States provides, in relevant part: "Congress shall make no law . . . abridging the freedom of speech or of the press."

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part: "Nor shall any State deprive any person of life, liberty, or property, without the due process of law."

The Village of Stratton Ordinance No. 1998-5, "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property in the Village of Stratton, Ohio, and Amending Ordinance No. 1996-__ of the Ordinances of the Village of Stratton, Ohio." This is set forth in full in the

Appendix to this brief (Merits Brief Appendix or "MBA") at MBA 1a. Petitioners did not challenge section 116.07 of the Ordinance, "Owner's/Occupant's Prohibition Against Entry."

STATEMENT OF THE CASE

Petitioners are the Watchtower Bible and Tract Society of New York, Inc., and individual Jehovah's Witnesses who consider it part of their individual responsibility before Jehovah God to follow Jesus' example and obey his command to go from house to house to speak to people about the Kingdom of God. (Robert Ciranko, Tr. 18-20, J.A. 313a-15a). As part of their public ministry, individual Jehovah's Witnesses offer Bibles and Bible-based literature published by the Watchtower Bible and Tract Society ("Watchtower") to anyone who is interested in receiving it free of charge. (Robert Ciranko, Tr. 20-21, J.A. 315a-16a). Petitioners brought suit to challenge the constitutionality of Ordinance No. 1998-5, "Ordinance Regulating Uninvited Peddling and Solicitation Upon Private Property in the Village of Stratton, Ohio, and Amending Ordinance No. 1996-__ of the Ordinances of the Village of Stratton, Ohio" (the "Ordinance") (MBA 1a), which among other things prohibits them from going from house to house as part of their ministry without a permit. They challenge this ordinance because it imposes a burden on their First Amendment rights similar to burdens that have been imposed on Jehovah's Witnesses by hostile authorities throughout the United States over the years. *Prince v. Massachusetts*, 321 U.S. 158, 176 (1944) (Murphy, J., dissenting).

The efforts of Jehovah's Witnesses in the 1930s and 1940s restored "to their high, constitutional position the liberties of itinerant evangelists who disseminate their

religious beliefs in the tenets of their faith through distribution of literature." *Murdock v. Pennsylvania*, 319 U.S. 105, 117 (1943). As a result, legal conflicts between municipalities and the Witnesses regarding their public ministry largely ceased.

Ministers associated with the local congregation of Jehovah's Witnesses in Wellsville, Ohio ("Congregation"), have been experiencing difficulties with Village of Stratton officials about their door-to-door ministry since 1979. (Plaintiffs' Exhibit 3, Letter of Frank J. Bruzzese to Vercil E. Koontz, January 3, 1980, Tr. 86, J.A. 100a). In the early 1990s, a Village policeman told a group of Jehovah's Witnesses to leave the Village, stating, "I could care less about your rights." (Vercil Koontz, Tr. 58-59, J.A. 345a). The matter came to a head in 1998 when Stratton's Mayor personally confronted four Jehovah's Witnesses, who were leaving the Village after having returned to speak with residents who had previously shown interest in Bible-based discussions. (Tammy Tuckosh, Tr. 76-77, J.A. 362a-63a). After the Witnesses told the Mayor that they were "sharing Bible thoughts" with people, the Mayor told them that they were not allowed in the Village, that people had moved to Stratton with the understanding that they would not be bothered by Jehovah's Witnesses, and that if they had been men, he would have put them in jail. (Tammy Tuckosh, Tr. 77, J.A. 362a-63a).

Shortly thereafter, the Village of Stratton promulgated the Ordinance at issue in this litigation. (Defendants' Exhibit 21, Letter of Frank J. Bruzzese to Richard D. Moake, June 17, 1998, Tr. 86, J.A. 142a). The Ordinance requires anyone desiring to engage in any door-to-door, one-on-one communication to first obtain a permit issued at no cost from

the Mayor. Ord. § 116.03(a) (MBA 3a). This Ordinance is the successor to Ordinance No. 1996-06, which the Village revised after Watchtower disputed its applicability and constitutionality. (Plaintiffs' Trial Exhibit 5D, Tr. 86).

The record below is devoid of evidence or legislative history (town council minutes) supporting the necessity of this Ordinance. There are no documented complaints concerning the activities of Jehovah's Witnesses in Stratton. (Mayor John Abdalla, Tr. 115, J.A. 398a). The Village has never experienced a single incident of consumer fraud related to door-to-door activity. There have been no burglaries in Stratton. (Mayor John Abdalla, Tr. 115, J.A. 399a). Stratton has suffered no crime (violent or otherwise) related to door to door activities. (Mayor John Abdalla, Tr. 115-16, J.A. 399a). There are no documented incidents of crimes involving con games or schemes to bilk people from door to door. (Mayor John Abdalla, Tr. 115-16, J.A. 399a). The Mayor said he had never received a complaint that anyone called on a home at which a "No Trespassing" sign was posted. He never received a complaint of an individual calling on a residence despite the presence of a "No Solicitation" sign. (Mayor John Abdalla, Tr. 116, J.A. 400a).

Mayor Abdalla also stated that he understands that no one in the Village wants to listen to Jehovah's Witnesses. (Mayor John Abdalla, Tr. 129, J.A. 410a). According to the Mayor, the activity of Jehovah's Witnesses in going from door to door to speak with residents about the Bible fits within the Village Ordinance because "[i]n my opinion, they are going door to door, and they're preaching their so-called gospel." (Mayor John Abdalla, Tr. 127-28, J.A. 408a).

Despite the plain language of the Ordinance restricting door-to-door activity from 9:00 a.m. to 5:00 p.m., all six non-Witness applicants who requested a permit to go from door to door after 5:00 p.m. were issued such permits. (Defendants' Trial Exhibits 35 A-F, Completed Solicitor's Registration Forms, Tr. 86, J.A. 230a-47a). In contrast, the Mayor testified that even if one of Jehovah's Witnesses had applied for a permit to go from door to door after 5:00 p.m., he would not have issued it. (Mayor John Abdalla, Tr. 114, J.A. 398a).

Watchtower was unsuccessful in its efforts to convince the Village that its solicitation Ordinance did not apply to the pure speech and press activities of Jehovah's Witnesses. The Village insisted that its Ordinance applied, even though at no time during their public ministry in Stratton did the Witnesses seek donations while speaking with people from door to door. The Village had modified the predecessor ordinance by removing the requirement that someone invited to the home of a Village resident must first obtain a permit from the Mayor. (Ordinance § 116.03 of 1996-06, Plaintiffs' Trial Exhibit 5D, Tr. 86). The Village also eliminated the prior Ordinance's $10 permit fee. (Ordinance § 116.04 of 1996-06, Plaintiffs' Trial Exhibit 5D, Tr. 86). Despite these modifications, Jehovah's Witnesses continued to contest the Ordinance's applicability and constitutionality. However, the Village made it clear that it would enforce the Ordinance against Jehovah's Witnesses despite the long-standing recognition by courts that it is against the Witnesses' religious beliefs to obtain a permit to engage in their public ministry. *See Schneider v. New Jersey*, 308 U.S. 147, 159 (1939); *Lovell v. City of Griffin*, 303 U.S. 444, 448 (1938); *Coleman v. City of Griffin*, 189 S.E. 427, 428 (Ga. Ct. App. 1936), *appeal dismissed*, 302 U.S. 636 (1937); *Tucker v. Randall*, 15 A.2d 324, 325 (N.J. 1940).

The Ordinance became the subject of an action brought against the Village in the United States District Court for the Southern District of Ohio by the Congregation and Watchtower. The jurisdiction of the district court was invoked under 28 U.S.C. §§ 1331, 1343, 2201, and 2202, in that the validity of the Ordinance was challenged under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §§ 1983 and 1985. Jehovah's Witnesses did not challenge the validity of section 116.07 of the Ordinance, entitled "Owner's/Occupant's Prohibition Against Entry," by which a resident can post a "No Solicitation" sign and register with the Mayor his desire not to be visited. Plaintiffs' Reply Memorandum to the Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction at 1-2, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 61 F. Supp. 2d 734 (S.D. Ohio 1999).

On August 18, 1999, U.S. District Court Judge Edmund A. Sargus, Jr., issued a final order (J.A. 58a), holding that the Ordinance could validly be applied to Jehovah's Witnesses because they were "canvassers" who visited homes for the purpose of "explaining their 'cause,' the Gospel of Jehovah." (J.A. 50a). However, the court also held that three provisions of the Ordinance were improper.

First, the court found section 116.03(b)(5) to be onerous because it requires permit applicants to list the specific addresses of each private residence they intend to visit. The court held that the Village remedied this problem by agreeing to provide applicants a list of all addresses in the Village which could be appended to the permit application. (J.A. 52a).

Second, the court addressed section 116.03(b)(6), which requires the permit applicant to provide "[s]uch other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." (J.A. 52a). The court held that this provision would be satisfied if Petitioners were to state as their purpose "the Jehovah's Witness ministry." (J.A. 53a).

Third, the court found that section 116.05's limitation of door-to-door activity to the hours of 9:00 a.m. to 5:00 p.m. to be an invalid restriction and ordered the Ordinance be modified to allow activity "to occur during reasonable hours of the day." (J.A. 55a).

Except for those three provisions, the court upheld the Ordinance's permit scheme. However, the court required the Village to discontinue listing "Jehovah [sic] Witnesses" as a category of unwanted visitors on the Registration Form. The court noted that "[n]o other religious group is listed separately or singled out on this list. . . . Although the Registration Form is an administrative form designed to facilitate compliance with the Ordinance, its language and its form must be content neutral." (J.A. 56a).

The Sixth Circuit affirmed, holding that the Ordinance was content neutral and of general applicability and therefore subject to intermediate scrutiny. (J.A. 71a-72a). The court held that the Ordinance did not violate the free exercise or free speech claims of Jehovah's Witnesses. (J.A. 86a). The court did not comment on the free press claims raised by the Witnesses.

The circuit court ruled that the Ordinance was not a flat prohibition on the dissemination of ideas and did not give the Mayor discretion in granting permits. (J.A. 87a). It also found the law to be content neutral, holding that reference to Jehovah's Witnesses in the registration form was not part of the text of the Ordinance. (J.A. 88a). Additionally, the court found that the Mayor's statement that he would not grant Jehovah's Witnesses an exemption from the Ordinance's time restrictions did not compel a finding of unequal application of the Ordinance, because the Witnesses had never requested an exemption from these restrictions. (J.A. 88a). Further, the circuit court held that the Ordinance was not unconstitutionally vague. (J.A. 77a-78a).

With respect to anonymity, although the Ordinance requires individuals engaging in political speech to give their names and addresses to the Village and to reveal their names to residents or police officers by displaying their permit upon demand, the circuit court held that this does not render the Ordinance unconstitutionally overbroad. (J.A. 76a). The circuit court held that requiring canvassers to reveal their names does not impinge anonymous political speech because they reveal a portion of their identity (their physical appearance) in the very act of going from door to door. (J.A. 76a). The circuit court held that requiring "political canvassers to reveal the remainder of their identities, i.e., their names," does not violate the First Amendment. (J.A. 76a-77a).

As for the Witnesses' free speech claims, the circuit court held that the Village's interests — protecting its residents from fraud and undue annoyance in their homes — were sufficiently significant to justify impinging pure advocacy. (J.A. 80a-81a). It also found that there was a real threat of

the harm that the Village sought to prevent, namely, criminals posing as canvassers in order to defraud residents. (J.A. 81a-82a). The court paid deference to the Village's predictive judgment in enacting the Ordinance to protect its residents against this anticipated harm. (J.A. 83a).

The circuit court also held that the Ordinance protected privacy by penalizing individuals for ignoring "No Solicitation" signs. (J.A. 83a-84a). As for fraud, the court held that the Ordinance would assist the Village both in turning away individuals posing as Jehovah's Witnesses and in apprehending individuals committing fraud. (J.A. 84a). Finally, the court held that several alternatives to door-to-door canvassing were available — specifically, canvassing in stores, in restaurants, on street corners, and in parks and other public forums.

The dissent agreed with the majority that the Ordinance was not unconstitutionally vague and did not violate the free exercise rights of Jehovah's Witnesses. (J.A. 92a). The dissent agreed that intermediate scrutiny was the proper standard of review because the Ordinance was neutral on its face. (J.A. 92a). However, the dissent disagreed with the majority's intermediate scrutiny analysis and would have held that the Ordinance violated the First Amendment, because it burdens more speech than is necessary to further the Village's legitimate interests. (J.A. 93a). The dissent was concerned that subjecting non-commercial solicitation to the Ordinance's permit requirements restricted a substantial amount of speech unrelated to fraud. Further, the dissent noted that the availability of other outlets for speech did not alleviate the special burden placed on door-to-door communication of religious and political beliefs. (J.A. 94a-95a). In addition, the dissent felt that enforcing trespass laws

was a less restrictive means of protecting homeowners from unwanted annoyance. (J.A. 95a). Finally, the dissent stated that the Village failed to demonstrate either the reality of the harm it sought to prevent or the efficacy of the Ordinance's restrictions in preventing the anticipated harm and would have held the permit requirement to be an unconstitutional infringement of Jehovah's Witnesses' First Amendment rights. (J.A. 97a).

SUMMARY OF ARGUMENT

The Village of Stratton's judicially sanctioned requirement that a door-to-door advocate or pamphleteer obtain the government's permission prior to engaging in pure speech or pure press activities is an unprecedented invasion of the free speech and free press liberties guaranteed to citizens of the Republic under the First Amendment.

This Court long ago limited the extent to which a municipality may invade "the free communication of information and opinion secured by the Constitution" to protect residents from fraud and annoyance. *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939). Despite the unbroken line of authority protecting the right to engage in unlicensed door-to-door advocacy, Stratton has enacted an Ordinance that regulates all forms of door-to-door speech and press activity. This Ordinance is anachronistic in that it: (1) relegates door-to-door, one-on-one dissemination of ideas without a permit to the status of a "nuisance" that is to be suffered by residents only after the Village has granted a person the "privilege" to engage in such activity (MBA 3a, 4a); (2) mimics solicitation ordinances from the 1930s; and (3) ignores the status accorded pure advocacy in well-established First Amendment jurisprudence. *See Lovell v. City of Griffin*, 303 U.S. 444

(1938); *Talley v. California*, 362 U.S. 60 (1960); *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995); *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999).

Although the free one-on-one exchange of ideas is a pillar of our democracy, Stratton has devalued both the constitutional right of speakers to express information and the constitutional right of residents to receive it if they so choose. *Martin v. City of Struthers*, 319 U.S. 141 (1943). Indeed, the scope of the Ordinance is so broad that it even reaches communication granted the most stringent constitutional protection — core political speech. In sweeping so broadly, the Ordinance effectively bans anonymous door-to-door political advocacy and pamphleteering. Not only must a person first give her name and address to the Village (which keeps it as a public record) to receive permission to go from door to door, but she must also produce her permit and thereby disclose her name to police officers or residents who demand to see it. Since failure to obtain a permit is a criminal offense under the Ordinance, engaging in door-to-door communication without a permit in Stratton is a criminal act.

The Village could have used alternative means of protecting its interests that do not abridge First Amendment rights. It could prosecute those who actually commit fraud or violate privacy. It could allow residents to post "No Trespassing" or "No Solicitation" signs, thereby deciding for themselves whether and how to deter fraud or protect their privacy. The Village could have drafted the Ordinance to regulate only commercial activity. It could enforce the existing array of Ohio state consumer protection laws that address the anticipated problems. In sum, absent any evidence

to suggest that the exercise of pure speech or press activity had or would cause the harm it sought to avoid, the Village has not narrowly tailored its Ordinance to create a nexus between the perceived problems of consumer fraud and invasion of residential privacy and the prophylactic mechanism it has enacted.

Among the bedrock principles upon which this nation was founded is the precept that citizens need no license to speak to each other; need no license to disseminate printed material without charge. Stratton's Ordinance is anathema to America's system of government; it strikes at the foundation of a free government by a free people and therefore is unconstitutional.

ARGUMENT

I. Stratton's regulation of uninvited canvassing is unconstitutionally overbroad because it criminalizes anonymous advocacy.

a. Rather than recognizing that freedom of speech and press are fundamental personal rights and liberties protected by the First Amendment, the Village has made pure door-to-door, one-on-one advocacy without its prior permission a criminal act.

Reflecting a way of thinking that was rejected 50 years ago, Stratton enacted the Ordinance predicated on the notion that communicating with its residents is a privilege to be bestowed by the Village. Section 116.01 of its Ordinance declares that "[t]he practice of going in and upon private property and/or the private residences of Village residents . . . not having been invited to do so by the owners or occupants . . . and not having first obtained a permit . . . is . . . a nuisance and is prohibited."

(MBA 3a). Section 116.02 authorizes Village officials "to abate any such nuisance." (MBA 3a). Section 116.99(a) makes door-to-door, one-on-one advocacy without a previously obtained permit a criminal act.[1] (MBA 9a-10a).

While regulating "solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services," section 116.01 also requires "canvassers . . . explaining any . . . cause" to obtain a permit. *Id.* According to the Village, "[t]he word 'cause' in Chapter 116 serves the statute's intent to apply to *all* forms of door-to-door canvassing, whether for commercial, political, or religious purposes." Brief of Appellees at 20, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087) (emphasis in the original).

The Ordinance is premised upon the notion that the Village is entitled to grant permission, "the privilege," to engage in one-on-one, door-to-door communication. Ord. § 116.03(b)(4) (MBA 4a). To obtain a permit, a person must state "[t]he length of time for which the *privilege* to canvass or solicit is desired." Section 116.03(b)(4) (emphasis added). Such a premise completely ignores the bedrock principle that door-to-door "dissemination of ideas [is] in accordance with the best tradition of free discussion." *Martin v. City of Struthers*, 319 U.S. at 145. According to Stratton, unless he first obtains the Village's permission, a person commits a crime when he goes to his neighbors' homes without invitation to speak about religion, politics, or the Cincinnati Reds' need for starting pitchers.

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1. Violation of the Ordinance is a misdemeanor of the fourth degree (§ 116.99(a)) punishable by a term of imprisonment not more than 30 days, Ohio Rev. Code § 2929.21(B)(4), or fine of not more than $250, *id.* § 2929.21(C)(4).

b. This Court has never upheld an ordinance requiring a person to obtain the government's permission as a precondition to engaging in pure speech and press advocacy from door to door.

Stratton is hardly the first municipality to attempt to prohibit or regulate pure religious advocacy. Many municipalities in the past have attempted unsuccessfully to apply commercial solicitation ordinances to the religious speech and press activities of Jehovah's Witnesses. *See, e.g., Tucker v. Texas*, 326 U.S. 517 (1946); *Marsh v. Alabama*, 326 U.S. 501 (1946); *Martin v. City of Struthers*, 319 U.S. 141 (1943); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943); *Jamison v. Texas*, 318 U.S. 413 (1943); *Cantwell v. Connecticut*, 310 U.S. 296 (1940); *Schneider v. New Jersey*, 308 U.S. 147 (1939); *Lovell v. City of Griffin*, 303 U.S. 444 (1938). This line of authority establishes a bulwark against municipal regulation of pure door-to-door religious and political advocacy. *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976).

Protection against such regulation extends even to door-to-door solicitations for money, because such activity often is intertwined with advocacy. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620 (1980). Although Jehovah's Witnesses did not solicit money in the Village, and are not seeking the right to solicit funds without a permit, *Village of Schaumburg* well illustrates the protection accorded door to door dissemination of ideas. In fact, in *Village of Schaumburg* this Court expressly rejected a restrictive reading of the protection afforded door-to-door advocacy:

> It is urged that the ordinance should be sustained because it deals only with solicitation and because any charity is free to propagate its views from door to door in the Village without a permit as long as it refrains from soliciting money. But this represents a

> far too limited view of our prior cases relevant to canvassing and soliciting by religious and charitable organizations.

Id. at 628.

Unlike the Village of Stratton, the Village of Schaumburg recognized the unlawfulness of requiring municipal permission as a precondition to the dissemination of ideas and information. It well appreciated that a pre-speech, pre-publication/circulation license was an impermissible denial of liberty.

c. By criminalizing unauthorized door-to-door political advocacy, the Village impermissibly abolishes anonymous political discourse.

By sweeping all forms of discourse within its Ordinance, the Village regulates speech that

> occupies the core of the protection afforded by the First Amendment:
>
> > "Discussion of public issues . . . are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'"

McIntyre v. Ohio Elections Commission, 514 U.S. at 346 (citations omitted).[2]

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2. First Amendment limitation against abridging freedom of speech or the press is applicable to the states and their political subdivisions. *City of Ladue v. Gilleo*, 512 U.S. 43, 45 n.1 (1994) (citing *Gitlow v. New York*, 268 U.S. 652 (1925), and *Lovell v. City of Griffin*, 303 U.S. 444 (1938)).

In *McIntyre*, Mrs. McIntyre was engaged in "handing out leaflets in the advocacy of a politically controversial viewpoint — [which] is the essence of First Amendment expression." *Id.* at 347. In Stratton, a person desiring to engage in the same activity must disclose her name, both on an application and on a permit, as a condition to undertaking such activity. Ord. §§ 116.03(b)(1) and 116.04. (MBA 4a, 5a). Thus, the Village disregards a speaker's First Amendment right not to identify herself. The Ordinance flies in the face of this Court's determination in *McIntyre* that "the identity of the speaker is no different from other components of the document's content that the author is free to include or exclude." *Id.* at 348.

A person cannot withhold her identity since her name and address must be provided to the Mayor in advance and kept on file at his office as a public record.[3] She cannot withhold her identity since the Ordinance requires that the permit (containing the holder's name)[4] be displayed upon the request of a resident or police officer. Ord. § 116.04. (MBA 5a). It was Mrs. McIntyre's name on her flyers that was protected from compulsory disclosure, and it was irrelevant that she chose to personally hand out some of her handbills. Individuals who choose to reveal "their physical identities — to the residents they canvass" do not lose the right to withhold their name. (J.A. 76a).

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3. *See* Ohio Rev. Code § 149.43(A)(1) ("'Public Record' means any record that is kept by any public office.") *id.* § 149.43(B)(1) ("all public records shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours").

4. The permit states that it is "issued to the above Applicant." (Defendant's Trial Exhibit 36, Blank "Permit to Canvass to Solicit, Etc., Tr. 86, J.A. 248a).

The justification for including anonymous discourse within the liberty protected by the free speech and free press clauses predates the formation of this country. The press licensing law of England, the persecution of those engaged in the secret distribution of information, and the importance of anonymous discourse by pre-Revolutionary patriots moved this Court to recognize that "[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." *Talley v. California*, 362 U.S. 60, 64 (1960). Thus, Los Angeles' flat ban on anonymous leafletting was held to be void on its face. *Talley* held that a prohibition of anonymous leafletting, which required that handbills contain "the names and addresses of the persons who prepared, distributed or sponsored them," *id.* at 63-64, abridged freedom of speech and press. The reason was that "such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'" *Id.* at 64, *quoting Lovell v. City of Griffin*, 303 U.S. at 452. As the *Talley* Court observed, "[i]t is plain that anonymity has sometimes been assumed for the most constructive purposes." 362 U.S. at 65.

The *McIntyre* Court stated that *Talley*'s "reasoning embraced a respected tradition of anonymity in the advocacy of political causes." *McIntyre*, 514 U.S. at 343. Mrs. McIntyre's right to engage in one-on-one dissemination of information without revealing her identity was upheld against a state prohibition against distribution of unsigned campaign leaflets. As the *McIntyre* Court explained:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but

> an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. . . . It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation — and their ideas from suppression — at the hand of an intolerant society.

Id. at 357. *McIntyre* recognized that "[w]hatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry." *Id.* at 342. Further, "[t]he decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *Id.* at 341-42. Under Stratton's Ordinance, it is a criminal act to engage in anonymous pamphleteering from door to door.

The Ordinance also requires a person to inform the Mayor of the nature and purpose of the cause being discussed and the organization involved. The Ordinance states:

> (b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:
>
> . . . .

> (2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;
>
> (3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant.

Ord. § 116.03(b)(2), (3) (MBA 4a).

What if a person wants to discuss the need for a new mayor, or his dissatisfaction with the current Mayor's treatment of minority religious groups? Especially within the small community of Stratton, when he applies for a permit and reveals his name, would he not be exposed to the "fear of economic or official retaliation"? At the very least, he would lose his right "to preserve as much of [his] privacy as possible." *McIntyre*, 514 U.S. at 341-42. *Cf. Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 92 (1982) ("The Constitution protects against the compelled disclosure of political associations and beliefs. Such disclosures 'can seriously infringe on privacy of association and belief guaranteed by the First Amendment.'") (quoting *Buckley v. Valeo*, 424 U.S. 1, 64 (1976)). Stratton's ban on anonymous door-to-door pamphleteering is not consistent with the free speech interests recognized in *McIntyre*, which spoke of anonymity being a shield against tyranny. Such a shield is most needed when the Mayor of a small town, who also serves as the municipal judge, is the official from whom the permit must be obtained.

The Ordinance also impermissibly invades the protection accorded core political speech in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). *Buckley* dealt with initiative petition circulation, "interactive communication concerning political change." *Id.* at 186. Colorado's attempt to force "circulators to reveal their identities at the same time they deliver their political message" did not pass constitutional muster because it was a restraint on speech "more severe than was the restraint in *McIntyre*." *Id.* at 198-99. While noting the similarities to *McIntyre*,[5] the *Buckley* Court recognized a greater interest in anonymity: "Petition circulation is the less fleeting encounter, for the circulator must endeavor to persuade electors to sign the petition. . . . The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest." *Id.* at 199.

Stratton's Ordinance violates the First Amendment protection against the government's compelling a person to divulge her name as a pre-condition to engage in pure speech activity. Revealing one's name to the Mayor removes anonymity as effectively as a badge requirement. Further, during a door-to-door, face-to-face conversation, a person violates the Ordinance if she refuses to present her permit and thereby her name "at the precise moment when [her] interest in anonymity is greatest."

Section 116.04 requires that, while the holder is exercising the privilege conveyed by the permit, the permit "*shall be exhibited* by such person whenever he is requested

5. "Circulating a petition is akin to distributing a handbill . . . . Both involve a one-on-one communication." *Buckley*, 525 U.S. at 646, *citing McIntyre*.

to do so by any police officer or by any person who is solicited." Ord. § 116.04 (emphasis added) (MBA 5a). Under section 116.06(f), the permit may be revoked if the holder fails to comply with the request. (MBA 6a). In any other town in America, if one refuses to give one's name to a householder, the resident can shut the door and ignore the message. However, the speaker does not lose his right to call on the next door. On the other hand, in Stratton, by refusing to identify himself, one runs the risk of losing the "privilege" to continue to engage in one-on-one, door-to-door political discourse.

Refusing to participate in the permit scheme by engaging in door-to-door advocacy without obtaining a permit in Stratton is a criminal act; therefore, one cannot freely engage in the "respected tradition of anonymity in the advocacy of political causes" in the Village. *McIntyre*, 514 U.S. at 343.

d. The Ordinance is unconstitutionally overbroad because it restricts more speech than the Constitution permits.

The Ordinance is unconstitutionally overbroad because it restricts a substantial amount of constitutionally protected speech. Under the "overbreadth doctrine," Petitioners may assert the interests of others not before the Court — in this instance, those desiring to engage in political discourse. However, the Witnesses continue to assert that the Ordinance is also unconstitutionally overbroad in its inclusion of religious speech.[6]

6. This overbreadth claim is fairly included within the Question Presented. *See R.A.V. v. City of St. Paul*, 505 U.S. 377, 381 n.3 (1992).

Jehovah's Witnesses are neutral in the political affairs of this world. (*Knowledge That Leads to Everlasting Life*, Watchtower's Trial Exhibit 6E, pg. 124, Tr. 86, referring to John 17:14). Although they themselves do not participate in political discourse (anonymous or otherwise), Petitioners may properly challenge Stratton's Ordinance as being unconstitutionally overbroad because it prohibits anonymous political discourse. "[A] party [may] challenge an ordinance under the overbreadth doctrine in cases where . . . the ordinance sweeps too broadly, penalizing a substantial amount of speech that is constitutionally protected." *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 129-30 (1992).

Since Stratton's permit scheme applies to, and may well deter, individuals who wish to engage in one-on-one political communication from door to door, its existence may cause "others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). To assess the facial invalidity of the Ordinance, Petitioners may invoke the overbreadth doctrine. *Los Angeles Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. 32 (1999). The possibility that "persons whose expression is constitutionally protected may well refrain from exercising their right for fear of criminal sanctions provided by a statute susceptible of application to protected expression," *id.* at 38, *quoting Gooding v. Wilson*, 405 U.S. 518, 520-21 (1972), amply supports the use of this doctrine to address the facial unconstitutionality of the Ordinance.

While the Ordinance creates an impermissible risk of suppression of core political speech, it also sweeps religious speech within its ambit. In considering whether the Ordinance

is overbroad, the Court may properly consider that it also regulates religious speech. At times, "religious" and "political" discourse may be indistinguishable. For example, this Court cited religious speech cases in support of the statement that political speech in *McIntyre* was "the essence of First Amendment expression." *McIntyre*, 514 U.S. at 347, *citing International Society for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), *and Lovell v. City of Griffin*, 303 U.S. 444 (1938). In fact, the speech and press interests addressed in *Lovell* are identical to the speech and press issues raised in this case, as both arose from the dissemination of Bible-based literature by Jehovah's Witnesses.

In the context of pure advocacy, religious speech and political speech are equivalent liberty interests.

> In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Cantwell v. Connecticut, 310 U.S. 296, 310 (1940); *see also Heffron v. International Society for Krishna Consciousness*, 452 U.S. 640, 652-53 (1981) ("organizations having social, political or other ideological messages to proselytize . . . are entitled to rights equal to those of religious groups").

Although some speech is more readily classified as wholly "religious" or "political" in nature, other speech has aspects of both. "Ideas have layers and textures that resist legal classifications." Vincent Blasi, *Milton's* Areopagitica *and the Modern First Amendment* (March 1995), *available at* http://www.nhc.rtp.nc.us:8080/ideasv42/blasi4.htm. In any event, pure expression of religious ideas warrants the same First Amendment protection extended to pure expression of political ideas: "A priest has as much liberty to proselytize as a patriot." *Good News Club v. Milford Central School*, 121 S. Ct. 2093, 2107 (2001) (Scalia, J., concurring).

Because it abridges Jehovah's Witnesses' freedom of religious speech, the Ordinance is unconstitutionally overbroad. The Village has made clear that it would enforce the Ordinance against the Witnesses. In light of the long-standing recognition by courts that it is against the Witnesses' religious beliefs to obtain a permit to engage in their public ministry, *see Lovell v. City of Griffin*, 303 U.S. at 448; *Schneider v. New Jersey*, 308 U.S. at 159, the effect of the Village's position is to ban them from speaking door to door in Stratton. "Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince. Accordingly, we have not excluded from free-speech protections religious proselytizing." *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995).

As this Court recognized in *Buckley*, Colorado's requirement that circulators be registered voters was an impermissible burden on speech. There were a variety of reasons underlying why some did not register. *Buckley*, 525 U.S. at 195, 196 ("ignorance or apathy," 'implication of

political thought and expression,' "private and public protest"). In the final analysis, the reason or motivation for not registering was irrelevant to the conclusion that the registration requirement itself was an impermissible burden on speech. Similarly, the reason or motivation not to obtain a permit under Stratton's Ordinance is irrelevant to the conclusion that the permit requirement itself is an impermissible burden on speech. A burden on religious expression that the State has failed to justify is as impermissible as a "burden on political expression that the State has failed to justify." *Meyer v. Grant*, 486 U.S. 414, 428 (1988). The Ordinance abridges free speech because it bans religious expression without a permit.

e. The Ordinance is an unconstitutional prior restraint because it delegates overly broad discretion to the decisionmaker.

"Generally, speakers need not obtain a license to speak." *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 802 (1988). The Ordinance falls "squarely within the ambit of the many decisions of this Court . . . holding that a law subjecting the exercise of First Amendment freedoms to the prior restraint of a license, without narrow, objective, and definite standards to guide the licensing authority, is unconstitutional." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 150-51 (1969). In making this statement, the *Shuttlesworth* Court cited *Lovell v. City of Griffin*, *Schneider v. New Jersey*, *Cantwell v. Connecticut*, and *Marsh v. Alabama* (each of which involved the public ministry of Jehovah's Witnesses) among the 17 cases forming the basis of the statement. *Shuttlesworth*, 394 U.S. at 150-51 n.2.

It is well established that a municipality must overcome a heavy presumption against the validity of a permit scheme that imposes a prior restraint upon speech. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992); *see also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 804 (2000). In upholding Stratton's permit scheme, the Sixth Circuit Court of Appeals overlooked this precedent.

Under the overbreadth doctrine, a party may challenge an Ordinance "in cases where every application creates an impermissible risk of suppression of ideas, such as an ordinance that delegates overly broad discretion to the decisionmaker." *Forsyth County*, 505 U.S. at 129. It is appropriate, in an overbreadth challenge, to consider the context within which a case arose:

> In evaluating respondent's facial challenge, we must consider the county's authoritative constructions of the ordinance, including its own implementation and interpretation of it. . . . In the present litigation, the county has made clear how it interprets and implements the ordinance.

Id. at 131 (citations omitted).

The Ordinance delegates overly broad discretion to the Mayor. In processing a permit application, the Mayor may request "[s]uch other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." Ord. § 116.03(b)(6) (MBA 4a). Though not clearly identified in section 116.03(b)(6), the "privilege" is apparently "the privilege to canvass or solicit" referenced in section 116.03(b)(4). (MBA 4a). Thus, the Mayor is given the discretion to decide whether

the purpose for which canvassing or soliciting is desired is accurately described and whether the person seeking a permit has provided sufficient information about himself and his business or purpose. Such broad discretion provides an open door for the "tyranny of the majority." *McIntyre*, 514 U.S. at 357.

The Village has made it clear how it interprets the permit scheme embodied in the Ordinance. At the time of his deposition, the Mayor, who was also the municipal judge, said that he did not know what the provision allowing him to request "[s]uch other information . . . as may be reasonably necessary to accurately describe the nature of the privilege desired" referred to. (Mayor John Abdalla, Tr. 123-24). So, in the Mayor's mind, there are no guidelines restraining his interpretation and enforcement of this section of the Ordinance. The impermissibility of this type of provision has already been established. As the Court said in *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 769 (1988), the statutory provision as to "such other terms and conditions deemed necessary and reasonable by the Mayor" permitted unbridled discretion. "It is apparent that the face of the ordinance itself contains no explicit limits on the mayor's discretion." Also, although he had granted permits to all six non-Witness applicants who had applied to go from door to door after 5:00 p.m., the Mayor said he would not have issued such a permit to Jehovah's Witnesses. (Defendants' Trial Exhibits 35 A-F, Completed Solicitor's Registration Forms, Tr. 86, J.A. 230a-47a). (Mayor John Abdalla, Tr. 114, J.A. 397a-98a). Further, if an individual applied for a permit, giving his name and address, said he wanted to go door to door to discuss a "cause," but was not affiliated with an organization, the Mayor said he would likely not issue a permit. (Mayor John Abdalla, Tr. 124, 126).

As implemented and interpreted, the Ordinance impermissibly grants the Mayor "overly broad licensing discretion." *Forsyth County*, 505 U.S. at 130.

II. Stratton's blunderbuss approach to regulating door-to-door advocacy fails strict scrutiny and is unconstitutional because it is neither narrowly tailored to serve overriding municipal interests nor an alternative less restrictive to speech.

The overbreadth of the Ordinance is corroborated by its inability to withstand strict scrutiny. As an abridgment of political expression, the Ordinance must be analyzed to determine whether it was "narrowly tailored to serve an overriding state interest." *McIntyre*, 514 U.S. at 347. The circuit court omitted this analysis.

As a regulation that bans core political speech and press (anonymous political discourse), the Ordinance can be upheld only if it survives exacting scrutiny in that "[n]o form of speech is entitled to greater constitutional protection." *Id.* First Amendment protection of core political speech, which includes "'interactive communication concerning political change,' . . . is 'at its zenith.'" *Buckley*, 525 U.S. at 640 (citations omitted); *see also Meyer v. Grant*, 486 U.S. at 420 ("limitation on political expression [is] subject to exacting scrutiny"). Therefore, the Ordinance must be "narrowly tailored to serve an overriding state interest." *McIntyre*, 514 U.S. at 347.

In addition, because the Ordinance requires the speaker to disclose his name — which he might otherwise have chosen not to disclose — it is "a direct regulation of the content of speech." *Id.* at 345; *see also Buckley*, 525 U.S. at

209 (Thomas, J., concurring) ("The challenged badge requirement . . . directly regulates the content of speech" and therefore "must be evaluated under strict scrutiny"); *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. at 795 ("Mandating speech that a speaker would not otherwise make necessarily alters the content of the speech. We therefore consider the Act as a content-based regulation of speech.").

Moreover, "if a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. at 804; *see also Reno v. A.C.L.U.*, 521 U.S. 844, 874 (1997) ("burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve").

The Ordinance withers under exacting scrutiny. The Village refuses to avail itself of several less restrictive alternatives that would address the concerns it has identified. For example, the simple expedient of residents posting their own "No Trespassing" or "No Solicitation" signs would be effective less-restrictive alternatives to protect them against annoyance and fraud. Moreover, relying on residents to post signs allows each resident to choose for himself whether to accept uninvited visitors. The Village could enforce existing criminal statutes, which provide a means of protecting residents from fraud that is less restrictive than the Ordinance's permit scheme. "The Village's legitimate interest in preventing fraud can be better served by measures less intrusive than a direct prohibition on solicitation. Fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Village of Schaumburg*, 444 U.S. at 637.

Rather than trying to prevent fraud or to protect privacy by banning pure speech without a permit, the Village could accomplish these objectives by enforcing existing laws, including Ohio's Charitable Solicitation Act,[7] the Consumer Sales Protection Act, or the Home Sales Solicitation Act. Enforcing existing laws would be a less restrictive means of protecting residents from fraudulent misrepresentation than imposing a prior restraint on pure speech. Likewise, the enforcement of laws against trespass would less restrictively protect residents' privacy. *Id.* at 639. The existence of this array of less restrictive alternatives underscores the Ordinance's unconstitutionality.

In addition, the Ordinance is not narrowly tailored to the interests that the Village purportedly seeks to serve.

> [M]ore narrowly tailored rules are in keeping with the First Amendment directive that government not dictate the content of speech absent compelling necessity, and then, only by means precisely tailored. "Broad prophylactic rules in the area of free expression are suspect. Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms."

Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. at 800-01, *quoting NAACP v. Button*, 371 U.S. 415, 438 (1963) (citations omitted). To survive strict scrutiny, the Ordinance must be "narrowly tailored." *Boos v. Barry*,

7. Interestingly, the Ohio General Assembly specifically exempted "any religious agencies and organizations" from the purview of this statute, Ohio Rev. Code § 1716.03, an exemption approved by the Sixth Circuit. *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1478 (CA6 1995).

485 U.S. 312, 329 (1988). Stratton's Ordinance fails this test since it is not narrowly tailored to those forms of speech that are allegedly the source of harm.

> Content-based speech restrictions are generally unconstitutional unless they are narrowly tailored to a compelling state interest. This is an exacting test. It is not enough that the goals of the law be legitimate, or reasonable, or even praiseworthy. There must be some pressing public necessity, some essential value that has to be preserved; and even then the law must restrict as little speech as possible to serve the goal.

Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 680 (1994) (O'Connor, J., concurring in part, dissenting in part) (citations omitted).

Rather than being narrowly tailored, Stratton's Ordinance encumbers all forms of door-to-door speech and press activity. *Buckley*, 525 U.S. at 210 (Thomas, J., concurring) ("It burdens all . . . whether they are responsible for committing fraud or not."). "Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation." *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 265 (1986). Pure advocacy, unconnected to the solicitation of funds poses no danger to the residents of Stratton.

That the Ordinance is not narrowly tailored is plainly seen by reviewing the only portion of the Ordinance that was not contested below. Section 116.07 provides a means by

which a resident may give notice that he does not want any or certain uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants, or transient vendors coming on his property. (MBA 6a-9a). Simply by registering his property with the Mayor's office and posting a "No Solicitation" sign on his property, the resident avails himself of the protection of the Ordinance. Therefore, anyone who is within the proper definition of a "solicitor" and comes to that home uninvited is in violation of the Ordinance. In effect, section 116.07 allows the resident, and not the Village, to regulate who comes on his property. If implemented on its own, section 116.07 would be an effective means of protecting the Village's interests in preventing fraud and protecting privacy. Jehovah's Witnesses do not challenge section 116.07.

The existence of section 116.07 demonstrates the availability of less intrusive means to protect the Village's interests. *See Village of Schaumburg*, 444 U.S. at 639 ("Other provisions of the ordinance, which are not challenged here, such as the provision permitting homeowners to bar solicitors from their property by posting signs reading 'No Solicitors or Peddlers Invited,' . . . suggest the availability of less intrusive and more effective measures to protect privacy.") Section 116.07 of the Ordinance, standing alone, is a more narrowly tailored (and less restrictive) means of deterring fraud and protecting privacy than the challenged portions of the Ordinance. There is no need for the permit provisions of the Ordinance.

The Sixth Circuit Court of Appeals expressly rejected the application of strict scrutiny to review Stratton's Ordinance, in part because "*McIntyre's* holding misses Stratton's ordinance." (J.A. 76a). However, the circuit court correctly recognized that the Ordinance would not survive

such scrutiny. As the circuit court explained: "Even if *McIntyre* were implicated, we would find the ordinance constitutional on its face. In reviewing Ohio's statute, the [*McIntyre*] Court applied strict scrutiny. As we have already noted, we are reviewing Stratton's ordinance under intermediate scrutiny. We believe the difference in scrutiny would be outcome determinative." (J.A. 77a at n.6). Had the Sixth Circuit Court of Appeals applied the proper standard of scrutiny, it would have stricken the Ordinance. *Meyer v. Grant*, 486 U.S. at 425 ("[T]he statute trenches upon an area in which the importance of First Amendment protections is 'at its zenith.' For that reason the burden that [the state] must overcome to justify this criminal law is well-nigh insurmountable.").

III. The Village failed to meet its burden of establishing real, as opposed to conjectural, interests to justify its encumbrance of pure speech and press activity.

In attempting to justify the Ordinance, the Village asserts that it protects residents' privacy and deters fraudulent solicitation. Brief of Appellees at 18, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087). However, the Village has failed to meet its burden of establishing the reality of, as opposed to its conjecture about, the anticipated harms it seeks to remedy.

As this Court has stressed:

> When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply "posit the existence of the disease sought to be

> cured." . . . It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms in a direct and material way.

Turner Broadcasting System, Inc. v. FCC, 512 U.S. at 664 (citations omitted); *accord United States v. Playboy Entertainment Group, Inc.*, 529 U.S. at 804, 822 ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions. . . . [T]he Government must present more than anecdote and supposition."); *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 379 (2000) ("This Court has never accepted mere conjecture as adequate to carry a First Amendment burden.").

a. The Village failed to meet its burden to prove that abridging door-to-door advocacy is justified by real harm to residential privacy.

The "privacy of the home is certainly of the highest order in a free and civilized society." *Carey v. Brown*, 447 U.S. 455, 471 (1980). "[A] special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions. . . . [I]ndividuals are not required to welcome unwanted speech into their own homes and . . . the government may protect this freedom." *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988). Jehovah's Witnesses do not challenge the legitimacy of this right to privacy.

The Village advanced no evidence that posted "No Trespassing" signs have been ineffectual, that "No Solicitation" signs posted pursuant to section 116.07 of

the Ordinance have been ineffectual, or that Jehovah's Witnesses or others engaged in door-to-door advocacy have refused to leave private property when requested to do so by residents. There is simply no evidence that Stratton's permit scheme is needed for the sake of residential privacy.

Jehovah's Witnesses are not seeking to force unwilling listeners to hear messages they do not wish to hear. They readily accept a resident's expression of disinterest or request that they leave. But a resident may be willing to accept uninvited visitors, expressing his willingness by not posting a "No Trespassing" or "No Solicitation" sign. It is one thing to protect a resident from uninvited picketing in front of his home. It is quite another to protect him from unexpected visitors with whom he may wish to speak or whom he can send away in a matter of moments.

That the Ordinance does not secure residents' privacy interest is made clear by considering an unwilling listener who does not post a prohibiting sign at his residence. A person with a permit may legally knock on the resident's door. If a political candidate without a permit knocked at the door, the resident's privacy would be invaded. If that candidate obtained a permit and then knocked on the resident's door, the resident's privacy would still be invaded. *Cf. Schaumburg*, 444 U.S. at 638 ("householders are equally disturbed by solicitation on behalf of organizations satisfying the 75-percent requirement as they are by solicitation on behalf of other organizations"). The permit portion of the Ordinance has no nexus to a resident's privacy. In the absence of a posted notice, a resident has no privacy right not to have his door knocked upon.

b. The Village failed to meet its burden to prove that abridging door-to-door advocacy is justified by real harm caused by fraudulent solicitation.

While a municipality's interest in preventing fraudulent solicitation "is . . . legitimate and important," *Ohralik v. Ohio State Bar Association*, 436 U.S. 447, 462 (1978), it is not clear that prevention of consumer fraud rises to the level of compelling where core religious and political speech, rather than fundraising, are involved. *See Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974); *Secretary of State of Maryland v. Joseph H. Munson Co.*, 467 U.S. 947 (1984). Assuming, arguendo, that this interest is compelling, the Village failed to show the existence of a real problem concerning fraudulent solicitation in Stratton to support its subordination of free speech and free press.

In upholding the Ordinance, the Sixth Circuit deferred to the Village's "predictive judgments" (J.A. 79a), the testimony of the Mayor and Village Solicitor, who were "aware of problems in other Ohio cities with door-to-door fraud" (J.A. 82a), and the testimony of an Ohio State Assistant Attorney General, which was limited to opining that the Ordinance would be "helpful" in addressing the Village's interests. (Helen MacMurray, Tr. 216, J.A. 467a). Such speculative and anecdotal evidence is insufficient to justify the encumbrance the Village imposes on expressive activity that is not a source of harm. "Conceding that fraudulent appeals may be made in the name of charity and religion" a municipality 'cannot decide who may impart information from house to house.' *Schneider*, 308 U.S. at 164.

> Frauds may be denounced as offenses and punished by law. Trespassers may similarly be forbidden. If it is said that these means are less efficient and convenient [than the challenged ordinance], the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

Id.

The record shows that the Village has never experienced even a single incident of consumer fraud related to door-to-door activity. In fact, the record reveals no burglaries, no crime (violent or otherwise) related to door-to-door activities, and no record of crimes committed in door-to-door activity involving con games or schemes to bilk people. The Mayor said he never received a complaint that someone called on a home at which a "No Trespassing" sign was posted. No resident ever complained of an individual calling despite the presence of a "No Solicitation" sign. There are no documented complaints whatsoever concerning the activities of Jehovah's Witnesses. (Mayor John Abdalla, Tr. 115, 116, J.A. 398a-400a). Corroborating the absence of door-to-door fraud, the Village solicitor testified that the entirety of the Village's written records contained merely five incidents of unauthorized soliciting. (Frank Bruzzese, Tr. 165, J.A. 437a). The "offense" in four of these incidents was the failure to possess a permit. The fifth incident involved individuals' attempting to locate the owner of a parked vehicle displaying a "for sale" sign. (Frank Bruzzese, Tr. 141, 143, 144, J.A. 419a, 420a, 421a).

No evidence was presented to establish that the Ordinance could not have been drafted to regulate only commercial or charitable solicitations. No evidence was presented to establish why it was necessary to regulate political, religious, or any other kind of advocacy that does not involve money. In fact, the record is devoid of legislative history (town council minutes) supporting the necessity of this Ordinance.

The Village has failed to meet its burden of proof necessary to overcome the heavy presumption against the validity of a permit scheme that imposes a prior restraint on speech. *See Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992); *see also United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803 (2000). Allowing the Village to prevail, without evidence showing the necessity of encumbering and preventing pure advocacy that causes no harm, would turn into a talisman whatever phrase a municipality would choose to utter to support its regulations. *Cf. Bates v. City of Little Rock*, 361 U.S. 516, 525 (1960) ("governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance").

IV. Although the scrutiny applicable to speech on government property does not apply to the Ordinance, even if it did, the Ordinance is invalid.

Before the circuit court, the Village argued that the lower standards applicable to governmental regulation of speech on government property should apply to its regulation of speech on private residential property. Brief of Appellees at 16, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087). This argument is patently faulty. Even if, arguendo, a lower standard of review were used, Stratton's Ordinance still unconstitutionally burdens speech.

Stratton argued that its Ordinance "need not be the most restrictive means available, nor must it be the most effective, most reasonable, or most obvious choice, it need only be reasonable." Brief of Appellees at 16-17, *Watchtower Bible*

and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d 553 (CA6 2001) (No. 99-4087). The Village cites no authority to support its argument that private residential property is subject to the same regulation as government property that is not a traditional public forum. A resident's door clearly is not government property. Residential doors have historically been loci of communication of thoughts among citizens.

> For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings.

Martin v. City of Struthers, 319 U.S. 141, 141 (1943). Thus, contrary to the Village's argument below, there is no basis to apply a reasonable standard to speech on private residential property.

Moreover, even if reasonableness were the applicable standard, the Village cannot use the Ordinance as "an effort to suppress expression merely because public officials oppose the speaker's view." *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 46 (1983). The Village cannot single out one religious group on an administrative registration form (Judge Edmund A. Sargus, Jr., Tr. 272-73), assert that people move there because they know they will be free from the message of that particular religious group, and then claim that its Ordinance need only reasonably accomplish municipal interests.

Different rules apply to the government's regulation of speech on government-owned property that is a quintessential public forum. The government may regulate the time, place, and manner of expression on its own property, if its regulations "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *Perry Education Association*, 460 U.S. at 45. Even if residential property were to be treated the same as government-owned property, as Stratton asserted, the Ordinance fails even this level of constitutional scrutiny for at least three reasons.

First, the Ordinance is not content-neutral in that it expressly dictates content by requiring the disclosure of the speaker's name. For that reason alone, the Ordinance fails even this level of constitutional scrutiny.

Second, as set forth above, the Ordinance is not narrowly tailored. It is not limited to those forms of advocacy that allegedly are the exact source of the evil sought to be remedied, *City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 808 (1984), nor was it limited to rectify "the evils that it seeks to eliminate." *Ward v. Rock Against Racism*, 491 U.S. 781, 800 n.7 (1989).

Third, the Ordinance fails to leave open ample alternative channels of communication. In the first place, "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. at 163. Whether a resident would be more likely to have a one-on-one discussion on a controversial subject in the privacy of his home, on a public street, or in some public place should be left to the speaker and the listener. What business is it of

the government to intrude into such private conversations? Further, the Sixth Circuit's holding that canvassing "at stores, on street corners, in restaurants, in parks, and other public forums" (J.A. 86a) are ample alternatives ignores door-to-door advocacy's status as a "venerable means of communication that is both unique and important." *City of Ladue v. Gilleo*, 512 U.S. 43, 54 (1994); *see also City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. at 812 n.30, *citing Martin v. City of Struthers*, 319 U.S. at 146 ("Door to door distribution of circulars is essential to the poorly financed causes of little people.").

As shown by the testimony in this case, there are no ample alternatives to house-to-house contact.

> Q. In your opinion, sir, are there any ample alternatives to the house-to-house ministry?
>
> A. No, we [Jehovah's Witnesses] do not feel there is. We feel that we must be on the grass roots level. We feel our message is so important to life that we dare not miss anyone with it, and the only way to find everyone is to go from house to house.

(Robert Ciranko, Tr. 20, J.A. 315a).

> Q. Do you [Mayor Abdalla] know how an individual would be able to reach someone door to door who was not home between the hours of nine to five?
>
> A. Yes, they can leave a card and tell them to call back if they are interested.

Q. Is there any other way that they can be reached?

A. Not to my knowledge, no.

(Mayor John Abdalla, Tr. 114-15, J.A. 398a).

Jehovah's Witnesses have determined that the most effective way for them to conduct their "grass roots level" ministry is to contact people by going from house to house, as was done by first-century Christians. (Acts 5:42; 20:20). This Court has long recognized that "perhaps the most effective way" to disseminate ideas is to bring them to the notice of individuals "at the homes of the people." *Martin v. City of Struthers*, 319 U.S. at 145, *citing Schneider v. New Jersey*, 308 U.S. at 164. There is no alternative that is functionally equivalent to this method. "The First Amendment protects appellee's right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer v. Grant*, 486 U.S. at 424. This argument applies with equal force to those desiring to engage in political discourse. For this reason, the Ordinance is unconstitutional even under a lowered standard of scrutiny.

Stratton's Ordinance is strikingly reminiscent of the ordinance passed by the town of Irvington, New Jersey, over 60 years ago. The ordinances are similar in that they ban "unlicensed communication of any views or the advocacy of any cause from door to door." *Schneider*, 308 U.S. at 163. Many provisions of both ordinances are almost identical.

Irvington, New Jersey (1939)	Stratton, Ohio (2001)
"No person . . . shall canvass . . . without first having . . . received a written permit."	"No canvasser . . . shall go in or upon . . . private property . . . without first . . . obtaining a Solicitation Permit."
Canvasser must give "name, address, . . . by whom employed, address of employer"	Canvasser must give "name and home address"; "name and address of the employer or affiliated organization"
"[D]escription of project for which he is canvassing"	"Such other information . . . as may be reasonably necessary to accurately describe the nature of the privilege desired."
"[T]hat canvassing may only be done between 9 A.M. and 5 P.M."	"No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m."[8]
"[T]hat the permittee must exhibit the permit to any police officer or other person upon request"	"Each person shall at all times . . . carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited."
"Violation is punishable by fine or imprisonment."	"Violation . . . is a misdemeanor of the fourth degree."

8. The district court ordered this section be modified to allow activity "during reasonable hours of the day." (J.A. 55a).

This Court ruled that Irvington's ordinance was an unconstitutional violation of free speech and press liberties.

To be sure, unlike Irvington's, Stratton's Ordinance lacks the patently unconstitutional grant of censorial discretion to a municipal official to assess the "good character" of the permit applicant. *Schneider*, 308 U.S. at 163-64. Nevertheless, both ordinances reflect the same paternalistic municipal mindset. Stratton determined that its residents "are less able, than the village, to identify and regulate the conduct of persons, corporations, entities and organizations" engaged in door-to-door advocacy. Ord. § 2. (MBA 10a). Reflecting this paternalistic attitude, the Mayor 'understands' that no one in the Village wants to listen to Jehovah's Witnesses. (Mayor John Abdalla, Tr. 129, J.A. 410a). He states that people move into Stratton with the "understanding that they would not be bothered by Jehovah's Witnesses." (Tammy Tuckosh, Tr. 77, J.A. 362a).

This paternalistic "Village knows best" attitude also was reflected in the Village's principal brief in the circuit court. The Village cited no authority whatsoever to support its subordination of pure speech and pure press to the prior restraint of a permit. Rather, it argued that its Ordinance should "be analyzed according to a standard that is no less liberal than that controlling permissible First Amendment restrictions on government property . . ." Brief of Appellees at 16, *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553 (CA6 2001) (No. 99-4087).

Of course the government has the right to regulate access to its own property. It is quite another thing, however, for the government to regulate access to private residential

property. For Stratton to do so tramples the constitutional rights of those who desire to receive information at their homes. "Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community." *Martin v. City of Struthers*, 319 U.S. at 141. Like Struthers before it, Stratton "submits the distributer to criminal punishment for annoying the person on whom he calls, even though the recipient of the literature distributed is in fact glad to receive it." *Id.* at 144. *Cf. Vasquez v. Housing Authority of the City of El Paso*, __ F.3d __, 2001 WL1254820 (CA5 2001) ("The first amendment guarantees the unrestricted flow of information into the market place of ideas. This first amendment protection extends not only to those who contribute to the market place of ideas, but necessarily extends to those who seek to benefit from the resultant dialogue."). The Ordinance's provisions "in effect, makes a person a criminal trespasser if he enters the property of another for an innocent purpose without an explicit command from the owners to stay away." *Martin v. City of Struthers*, 319 U.S. at 148.

Paternalistic municipal regulation of speech has consistently been criticized. *See Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. at 790-91:

> The State's remaining justification — the paternalistic premise that charities' speech must be regulated for their own benefit — is equally unsound. . . . cf. *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791-792, and n. 31 . . . (1978) (criticizing State's paternalistic interest in protecting the political process by restricting speech by corporations); *Linmark Associates, Inc.*

> *v. Willingboro*, 431 U.S. 85, 97 . . . (1977) (criticizing, in the commercial speech context, the State's paternalistic interest in maintaining the quality of neighborhoods by restricting speech to residents). . . . [T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government.

"[I]t is safer to assume that the people are smart enough to get the information they need than to assume that the government is wise or impartial enough to make the judgment for them." *Id.* at 804 (Scalia, J., concurring in part, concurring in judgment).

Stratton's paternalistic lack of confidence in its residents' ability to evaluate for themselves the merits of pure noncommercial communication is not a sufficient predicate upon which to impose a prior restraint on speech and press. The Village must be held to a standard of proof, a standard of reality, a standard of accountability, lest the liberty of speech and press guaranteed by the Bill of Rights be greatly, and sadly, diminished.

CONCLUSION

Never before has a municipality been permitted to regulate one-on-one, door-to-door pure speech and press activity, without first establishing that such communication was an actual source of harm entitling it to override rights that lie "at the foundation of free government by free men." *Schneider v. New Jersey*, 308 U.S. at 161. Stratton's Ordinance effectively bans door-to-door anonymous discourse. It effectively bans the door-to-door activity of Jehovah's Witnesses. For the reasons stated above, Petitioners respectfully request that this Court rule it facially unconstitutional and reverse the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX — ORDINANCE NO. 1998-5

ORDINANCE NO. 1998-5

ORDINANCE REGULATING UNINVITED PEDDLING AND SOLICITATION UPON PRIVATE PROPERTY IN THE VILLAGE OF STRATTON, OHIO, AND AMENDING ORDINANCE NO. 1996-__ OF THE ORDINANCES OF THE VILLAGE OF STRATTON, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that Ordinance No. 1996-06 of the Ordinances of the Village of Stratton, Ohio, which was passed on September, 1996, is hereby amended, by replacing the language of said Ordinance No. 1996-06 in its entirety, with the following language:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that, pursuant to authority granted in Section 715.61 of the Ohio Revised Code, and pursuant to Home Rule powers vested in the Village under Section 3, Article XVIII of the Ohio Constitution, the Codified Ordinances of the Village of Stratton, Ohio are hereby amended by the adoption of the following Chapter and Codified Ordinance Sections.

Appendix

CHAPTER 116

Peddlers and Solicitors

116.01 Uninvited peddling and soliciting declared a nuisance.

116.02 Enforcement.

116.03 Solicitor's Registration and Permit — Prohibition of unregistered solicitation, etc.

116.04 Issuance of permit; fee, content and display; effect.

116.05 Time limitations.

116.06 Denial or Revocation of permit.

116.07 Owner/occupant prohibition — "No Solicitation" Registration.

116.98 Penalty.

CROSS REFERENCES

Power to inspect food products — see Ohio R.C. 715.46
Power to regulate — see Ohio R.C. 715.61 et seq.
Home solicitation sales — see Ohio R.C. 1345.21 et seq.
Charitable solicitations — see Ohio R.C. Ch. 1716
Trespassing — see Ohio R.C. 2909.21
Frozen desserts — see Ohio R.C. 3717.51 et seq.
Littering — see Ohio R.C. 3767.20

Appendix

116.01 UNINVITED PEDDLING AND SOLICITING DECLARED A NUISANCE.

The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

116.02 ENFORCEMENT.

The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

116.03 REGISTRATION REQUIRED — PROHIBITION OF UNREGISTERED SOLICITATION, ETC.

(a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.

(b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information:

(1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with credentials from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and,

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

116.04 ISSUANCE OF PERMIT; FEE, CONTENT AND DISPLAY.

Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit. The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrant's Solicitor's Registration Form.

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

116.05 TIME LIMITATIONS.

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. This time limitation shall be stated on the permit.

116.06 DENIAL OR REVOCATION OF PERMIT.

Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:

(a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.

(b) Fraud or misrepresentation contained in the Solicitor's Registration Form.

(c) Fraud, misrepresentation or false statements made in the course of conducting the activity.

(d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.

(e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

(f) The permittee ceases to possess the qualifications required in this chapter for the original registration.

The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with law.

116.07 OWNER'S/OCCUPANT'S PROHIBITION AGAINST ENTRY.

(a) Notwithstanding the provisions of any other Section of this Chapter 116, any person, firm or corporation who is

the owner or lawful occupant of private property within the territorial limits of the Village of Stratton, Ohio, may prohibit the practice of going in or upon the private property and/or the private residence of such owner or occupant, by uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors, by registering its property in accordance with Subdivision (b) of this Section and by posting upon each such registered property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such property.

(b) The registration authorized by Subsection (a) hereof shall be made by filing a "No Solicitation Registration Form", at the office of the Mayor, on a form furnished for such purpose. The form shall be completed by the property owner or occupant and it shall then contain the following information:

(1) The name and address of the owner or occupant who wishes to prohibit uninvited canvassing, soliciting, peddling, hawking, merchandising and/or transient vending upon the private property of the owner or occupant;

(2) The specific address of each property at which the owner or occupant prohibits such conduct; and,

(3) A written and signed statement which reads:

"I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I,

hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

_____

_____

_____

_____

_____

_____

_____

_____"

(c) No uninvited canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services, shall go in or upon the private property of an owner or occupant of property who has registered and posted such property in accordance with Subsections (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

(d) The holder of a permit issued pursuant to Section 116.04 of this Chapter shall not be exempt from the prohibition contained in Subsection (c) of this Section. The holder of such permit shall not go in or upon any private property which has been registered and posted in accordance with Subsection (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

116.99 PENALTY.

(a) Violation of Section 116.01 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(b) Violation of Section 116.03 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(c) Violation of Section 116.07(c) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(d) Violation of Section 116.07(d) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

SECTION 2: This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the Village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

SECTION 3: This Ordinance shall be in full force and effect immediately upon its passage.

_____

MAYOR

ATTEST: s/ Lola Kakascik
CLERK

Supreme Court, U.S.
FILED
JAN - 9 2002
OFFICE OF THE CLERK

No. 00-1737

In The

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of The Village of Stratton, Ohio, in His Official Capacity,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

Whether the First Amendment protection of anonymity is abridged by a municipality's registration and permit legislation that protects an unwilling listener at his home.

STATEMENT PURSUANT TO RULE 29.6

Pursuant to Rule 29.6, Village of Stratton, Ohio and John M. Abdalla, Mayor of the Village of Stratton, Ohio, in his official capacity, state that the Village of Stratton, Ohio is a political subdivision of the State of Ohio, and that the Mayor of Stratton, Ohio is an elected public official.

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STATEMENT OF THE CASE

Respondent, Village of Stratton, Ohio, is a municipal village located at the Eastern border of the state, adjacent to the Ohio River. It is situated approximately a quarter mile from the state of West Virginia, and about 15 to 16 miles from the Pennsylvania state line. Ohio Route 7 runs parallel to the Village, only a few feet from the Village's border. (Mayor John Abdalla, Tr. 88-89, J.A. 374a-375a). Stratton has a very small residential section which extends approximately two to two and one half football fields in an east and west direction, and is approximately one-half mile in a north and south direction. (Mayor John Abdalla, Tr. 89, J.A. 375a). There is one full time police officer and one part time officer. (Mayor John Abdalla, Tr. 100, J.A. 382a).

Chapter 116 of the Stratton Village Code [which is set forth in full in the Appendix to this brief (Response Brief Appendix or "RBA") at RBA 1a] was enacted in response to concerns of Village residents and officials about the intrusion of uninvited, and at times fraudulent, solicitors approaching their homes for a variety of purposes. (Mayor John Abdalla, Tr. 94-97, 106-107, J.A. 377a-381a, 387a-389a; Defendants' Trial Exhibits 12, 13, J.A. 120a-127a). Specific instances of problems that occurred within the Village were discussed before the legislative body, including the selling of siding, selling meats out of a pickup truck, and blacktop driveways. (Mayor John Abdalla, Tr. 94-97, J.A. 378a-380a). This "close knit" community (Mayor John Abdalla, Tr. 100, J.A. 382a) saw a need to offer protection to Stratton's vulnerable senior

citizen population, which was perceived as being especially susceptible to the scams and frauds that are commonly perpetrated through door-to-door solicitation. (Mayor John Abdalla, Tr. 94-97, J.A. 377a-381a; Village Solicitor Frank J. Bruzzese, Tr. 137-140, 159-162, J.A. 415a-418a, 433a-437a).

The Ordinance mandates that individuals register with the Mayor's office and obtain permits, prior to engaging in door-to-door solicitation within the Village. (Ordinance § 116.06, RBA 5a).

Permits are automatically issued to all applicants upon completion of the registration form. There is no charge to the registrant. (Village Solicitor Frank J. Bruzzese, Tr. 146-147, J.A. 423a-424a). Village council was informed by its Solicitor during the legislative process that:

> * * * I remember making a big speech on the council floor to say – to pound home this point. I said something almost exactly like this. Let's get this straight. When the little pig-tailed, freckle-faced girl scout comes to sell girl scout cookies, she gets a permit. And they all shake their heads. Then I say, when the Nazi party comes and asks for a permit, they get a permit. The girl scout with the pig tails is the same and the Nazi party, same as the Ku Klux Klan. Everybody gets a permit. And the only thing they have to do is complete the form. And I used the phrase "a completed information form is an automatic trigger." And I think I used the same phraseology to Mr. Moake. The completed form – We are not going to decide: Are you bad? Are you good? If you complete the information, it's an automatic trigger. * * *

(Village Solicitor Frank J. Bruzzese, Tr. 156-157, J.A. 431a-432a).

The legislative purpose included giving law enforcement a place to begin an investigation (Mayor John Abdalla, Tr. 106, J.A. 388a), and preventing residents from being disturbed in their homes. (Mayor John Abdalla, Tr. 106-107, J.A. 388a-389a; Village Solicitor Frank J. Bruzzese, Tr. 137-138, J.A. 415a-416a).

No individual or organization has been denied a permit, nor has there been a permit revoked, under the Ordinance. (Mayor John Abdalla, Tr. 103-105, J.A. 385a-387a).

Chapter 116 only allows a resident to limit solicitation and canvassing on their property through the submission of a "No Solicitation Registration Form" and the posting of a "No Solicitation" sign on the home. (Ordinance § 116.07, RBA 6a). No government representative makes any limitation or censors any message. At the time the Petitioners filed their Complaint, at least twenty (20) property owners had registered twenty-one (21) properties. (Defendants' Exhibit 34a-u, J.A. 167a-229a). Petitioners do not contest the constitutionality of this section of the Ordinance. Brief of Petitioners, p. 2.

Expert testimony by Helen MacMurray, the Chief of the Consumer Protection Section of the Ohio Attorney General's Office, established that door-to-door scams are a threat to residents and in particular to senior citizens. (Helen MacMurray, Tr. 211-214, 217-221, J.A. 462a-466a, 468a-473a). Ms. MacMurray stated that based on her experience, registration and permit ordinances such as

Stratton's deter fraudulent door-to-door activity, and assist law enforcement officials in apprehending those guilty of committing such frauds. She further stated that a registration and permit format also aided the senior by identifying a legitimate canvasser/solicitor from an illegitimate canvasser/solicitor. (Helen MacMurray, Tr. 215-217, 466a-469a).

Petitioners are members of the Wellsville, Ohio Congregation of Jehovah's Witnesses, Inc. (Vercil Koontz, Tr. 52, J.A. 52; Tammy Tuckosh, Tr. 72, J.A. 357a-358a). The Jehovah's Witnesses engage in door-to-door canvassing in order to preach, proselytize (Robert Ciranko, Tr. 19-21, 23-25, 28-29, 36-37, 45, J.A. 313a-316a, 317a-320a, 322a-324a, 326a-328a, 334a-335a), and, as a general policy, may offer "information" about how individuals can donate financially to the organization. (Robert Ciranko, Tr. 47, J.A. 336a-337a; Tammy Tuckosh, Tr. 73-74, J.A. 358a-359a) ("Well, usually we take the opportunity at the end of discussing a Bible thought . . . then we mention to them if they would like to donate towards the worldwide work. . . . ").

In April 1998, Richard D. Moake, counsel for Watchtower Bible and Tract Society of New York, Inc., the national Jehovah's Witnesses oversight group (Robert Ciranko, Tr. 17-18, 26-29, 41, J.A. 312a-313a, 320a-324a; Tammy Tuckosh, Tr. 84, J.A. 370a-371a), contacted the Village contending that aspects of the predecessor Ordinance to current Chapter 116 were unconstitutional under the First and Fourteenth Amendments. (Village Solicitor Frank J. Bruzzese, Tr. 144-145, J.A. 421a-423a; Defendants' Exhibit 17, J.A. 128a-134a).

Following the receipt of Mr. Moake's letter, Frank J. Bruzzese, the Village Solicitor, initiated correspondence with him in an attempt to reach agreement with the Petitioners on the language of a revised Ordinance that would make the Jehovah's Witnesses feel welcome in the community, and ensure that their First Amendment rights were protected. (Village Solicitor Frank J. Bruzzese, Tr. 145, J.A. 422a-423a; Defendants' Exhibit 17, J.A. 128a-134a; *see generally* Defendants' Exhibits 17-24, J.A. 128a-166a). On April 17, 1998, Mr. Bruzzese wrote to Mr. Moake inviting Mr. Moake's suggestions for modifications to the language of the Ordinance that would allay Petitioners concerns, yet protect the property owners from unwanted intrusions. Mr. Bruzzese stated, "The road to a solution is cooperation." (Defendants' Exhibit 17, J.A. 133a).

In subsequent letters, Mr. Moake did make several drafting suggestions to the Village, some of which were incorporated into the present Ordinance. (Village Solicitor Frank J. Bruzzese, Tr. 145-148, J.A. 422a-425a; Defendants' Exhibits 17, 22, J.A. 128a-134a, 157a-160a). However, Mr. Moake insisted that the Ordinance did not apply to the Petitioners, despite the Village's explicit statements that all solicitors and canvassers, including the Petitioners, were meant to fall within its ambit. (Defendants' Exhibits 18, 22, J.A. 135a-137a, 157a-160a). Mr. Moake suggested as an alternative that the Jehovah's Witnesses would be willing to notify the Village Police Department "before conducting door-to-door ministry in Stratton." (Defendants' Exhibit 18, J.A. 135a-137a).

The Village did not legislatively create the content of the permit utilized in furtherance of the registration provision. The actual permit, administratively created and used, does not identify the permit holder by name or other means. (Defendants' Trial Exhibit 36, J.A. 248).

Petitioners have never made an application to canvass or solicit within the Village. (Mayor John Abdalla, Tr. 103, J.A. 385a-386a).

Petitioners filed a pre-application facial and as applied Constitutional attack upon the Ordinance in the United States District Court for the Southern District of Ohio seeking declaratory and injunctive relief on the basis that Chapter 116 of the Stratton Village Code is unconstitutional under the First and Fourteenth Amendments. (Complaint With Exhibit A: Ordinance No. 1998-5 And Civil Cover Sheet, J.A. 10a-47a). The District Court granted in part and denied in part the Petitioners' motion and dismissed the case. (Judgment of the United States District Court for the Southern District, J.A. 61a).

Both the District Court and the Sixth Circuit Court of Appeals concluded that the Ordinance was content neutral and of general applicability subject to intermediate scrutiny. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 70a-71a). The Court of Appeals noted that the Village's principle objective in promulgating the Ordinance was to prevent fraud and protect the privacy interests of the residents of the Village. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 71a).

On October 15, 2001, this Court granted Petitioners' writ of *certiorari* solely as to Question 2 presented by the

Petition. (Order of the Supreme Court of the United States Allowing Certiorari, J.A. 98a).

Question 2 of Petitioners' Writ of *Certiorari* is entitled: "The Sixth Circuit's decision requiring individuals desiring to engage in anonymous door-to-door communication to obtain a permit conflicts directly with *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999)."

SUMMARY OF ARGUMENT

The writ issued by this Court questions whether the Stratton Ordinance overbroadly sanctions speech which is constitutionally permissible under *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), and *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999).

A review of the Ordinance indicates that it does not restrict any speech in a traditional public forum or designated public forum, nor to the willing listener in his home. Rather, this Ordinance is directed towards securing the privacy of residents in their homes and protecting residents in their homes from criminal activity. The Ordinance applies only on private property. This Court has long recognized that door-to-door expression or dissemination of ideas is rooted in the best traditions of free expression. At the same time, however, the Court has not hesitated to recognize the right of the property owner to enjoy peace and tranquility in the home, and to be free from unwanted speech in the privacy of the home. This

privacy interest applies regardless of whether the unwanted message is delivered into the home from an outside source, such as a public street or sidewalk, or through the mail. *Frisby v. Schultz*, 487 U.S. 474 (1988); *Rowan v. United States Post Office Dept.*, 397 U.S. 728 (1970).

McIntyre, supra, considered the Constitutional guarantees to anonymously disseminate handbills, fliers or other literature in a public forum, concerning a controversial public issue. The Ohio law that blanketly required the identity of the distributor to be placed on the document was found to violate the right to distribute literature anonymously in a public forum. The Court recognized that a more limited identification requirement would pass constitutional muster in a different context. *Id.* at 353.

In *Buckley v. American Constitutional Law Foundation,* 525 U.S. 182 (1999), the Court held that the state of Colorado could not require the circulators of initiative petitions to wear a badge which displayed their name. The badge display was a blanket requirement that was present at all times during the circulation process in all locations. However, *in dicta,* the Court approved a registration framework for petition circulators that separated in time the identification from the actual speech itself, or more precisely from the point that the speaker attempts to persuade the listener.

The Stratton Ordinance is narrowly tailored and accommodates the rights proclaimed in *McIntyre, supra,* and *Buckley, supra,* as they would apply on the private property of Village residents, and to the rights of those residents in their homes.

First, the Ordinance is a limited restriction of speech. A traditional method a property owner employs to prevent unwanted speech is the placement of a "No Trespassing" sign. The Stratton Ordinance makes the Village a bulletin board for the speech which its residents will endure in the privacy of their homes. The Ordinance provides choices to the residents to decide for themselves what speech they are willing to hear on their property, while the placement of a "No Trespassing" sign necessarily prevents all speech on private property. If a resident chooses not to restrict admission of a would be speaker to his property, then that speaker, whether anonymous or proudly identified, can enter private property and convey any message in any form desired. This right exists as long as the resident wishes to continue his implied invitation. The Ordinance allows all persons to speak, and all persons to speak anonymously with the consent of the resident or a police officer in furtherance of his duties. Like the right to speak at the private residence, the right to speak anonymously ceases at the determination of the resident. The Stratton Ordinance does not require a disseminator of ideas, whether religious or political, to place his name on the literature, wear a badge, or outwardly proclaim his identity in any manner. It only requires the speaker to carry the permit on his person, presumably in a pocket. The Ordinance places the extent of the residents' implied invitation to speak anonymously where it belongs, in the discretion of the resident. Once the resident requests the identity of the speaker, the right to speak anonymously has ended and disclosure of registration compliance is required. Thus, the Ordinance represents a careful balancing of the right

to speak anonymously and the right to privacy. The right to speak anonymously no longer exists when the resident asks for production of the permit. Then the curtain of anonymity is lifted only to the extent that registration is confirmed upon private property.

In *Hill v. Colorado*, 530 U.S. 703 (2000), the Court approved a statute limiting First Amendment activity within a specified zone without the listener's consent. This restriction was approved even though the speech took place on a sidewalk, the quintessential public forum. Stratton's Ordinance touches more lightly on First Amendment rights. It protects the rights of the unwilling listener in the home where the right to be free from such intrusion is recognized as absolute if the resident so chooses. The peace and tranquility of the resident in his home has been zealously protected by this Court from any unwarranted, outside disruption. The Stratton Ordinance is narrowly tailored to guard against fraud, criminal activity, and to assure a resident's privacy rights, while permitting the full gamut of First Amendment rights, including the right to speak anonymously to the extent that a resident permits. First Amendment activity is unaffected elsewhere and alternate channels of communication are available.

Overbreadth analysis permits the Court to determine if the scope of the Ordinance inhibits the recognized First Amendment rights of a hypothetical person. The Petitioners claim that the rights to anonymously promote political causes conferred in *McIntyre, supra,* and *Buckley, supra,* are swept within the Ordinance's otherwise legitimate regulations. While the Village argues that the rights

set forth in *McIntyre, supra,* and *Buckley, supra,* are not implicated by the Ordinance because of its narrow framing, the sweep of the Ordinance is also claimed by Petitioners to regulate both religious and political speech evenly. This thereby denies their First Amendment overbreadth analysis.

The question presented is whether the First Amendment interests of anonymity are abridged by the protection the Ordinance affords the unwilling listener in his home.

ARGUMENT

I.

A MUNICIPALITY HAS A LEGITIMATE GOVERNMENTAL INTEREST IN PROTECTING ITS CITIZENS FROM CRIME AND PRESERVING THE PRIVACY OF THEIR HOMES.

This Court's constitutional calculus has driven the creation and development of Stratton's registration and permit program for uninvited speech upon private property.

The right of homeowners to be left undisturbed by solicitors and canvassers in their homes is well established. *See, e.g., Rowan v. United States Post Office Dept.*, 397 U.S. 728, 737 (1970) ("Nothing in the Constitution compels us to listen to or view any unwanted communication, whatever its merit. . . . The ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality. . . . "). The power

of a municipality to protect this right is also well established. *Carey v. Brown*, 447 U.S. 455, 471 (1980) ("The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society"), and *Breard v. Alexandria*, 341 U.S. 622, 640 (1951) ("To the city council falls the duty of protecting its citizens against the practices deemed subversive of privacy and of quiet"). *See also Kovacs v. Cooper*, 336 U.S. 77, 83 (1949) ("The police power of a state extends beyond the health, morals and safety, and comprehends the duty, within constitutional limitations, to protect the well-being and tranquility of a community").

Canvassing and solicitation on private property are activities entitled to First Amendment protection. These activities, however, are not immune from regulation.

As eloquently stated in *Hynes v. Mayor of Oradell*, 425 U.S. 610 (1976):

> There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety. We cannot say, and indeed appellants do not argue, that door-to-door canvassing and solicitation are immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home.

Id. at 619.

In support of this view the Court quoted Professor Zechariah Chafee who wrote:

> "Of all the methods of spreading unpopular ideas, [house-to-house canvassing] seems the least entitled to extensive protection. The possibilities of persuasion are slight compared with the certainties of annoyance. Great as is the value of exposing citizens to novel views, home is one place where a man ought to be able to shut himself up in his own ideas if he desires." Free Speech in the United States 406 (1954).

Id. at 619.

In the past, this Court has struck down restrictions upon door-to-door soliciting and canvassing that have been enacted by municipalities primarily because of the amount of discretion that the ordinances gave municipal officers to prevent or limit activities. *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 640 (1980) (Rehnquist, J., dissenting), *citing Schneider v. New Jersey*, 308 U.S. 147, 163-64 (1939); *Cantwell v. Connecticut*, 310 U.S. 296, 305-06 (1940); *Largent v. Texas*, 318 U.S. 418, 422 (1943); *Hynes v. Mayor of Oradell*, 425 U.S. 610, 620-21 (1976).

In *Martin v. City of Struthers*, 319 U.S. 141 (1943), a case involving religious solicitation by a member of the Jehovah's Witnesses sect, the Court invalidated a municipality's total ban on canvassing. When the Court balanced the First Amendment rights of the Jehovah's Witnesses against the rights of the homeowners to safety, security, privacy, and quiet, it found that the *complete* ban on door-to-door soliciting failed to pass muster, because it substituted "the judgment of the community for the judgment of the individual householder." *Id.* at 144. Nevertheless, the Court stated:

> Ordinances of the sort now before us may be aimed at the protection of the householders from annoyance, including intrusion upon the hours of rest, and at the prevention of crime. Constant callers, whether selling pots or distributing leaflets, may lessen the peaceful enjoyment of a home as much as a neighborhood glue factory or railroad yard which zoning ordinances may prohibit. . . . In addition, burglars frequently pose as canvassers, either in order that they may have a pretense to discover whether a house is empty and hence ripe for burglary, or for the purpose of spying out the premises in order that they may return later.

Id. at 144.

The *Martin, supra,* Court concluded that the rights of the unwilling listener to be secure in the privacy of his home trumped a speaker's interest in pursuit of religious or political activity. *Id.* at 157.

II.

REGISTRATION AND LIMITED IDENTIFICATION ARE CONSTITUTIONAL MEANS TO PROTECT THE PRIVACY OF RESIDENTS AND DETER CRIME.

Early on, cases identified municipal registration and permit programs as reasonable means to protect the privacy of residents and deter crime.

A registration mechanism that required establishment of identity and authority to act on behalf of a cause was expressly authorized in *Martin v. City of Struthers,* 319 U.S. 141, 149, fn. 14 (1943), *citing Cantwell v. Connecticut,* 310 U.S. 296, 306 (1940). The use of identification

devices to control the abuse of those who call on a home is a suggested methodology by the Court. *Id.* at 148.

Justice Frankfurter, dissenting in *Martin v. City of Struthers, id.* at 154, signaled that the Court should not unwittingly slip into the judgment seat of the legislature in determining the protective activity necessary. Subsequently, First Amendment analysis has included deference to legislative activity, and Stratton is entitled to that deference.

Legislatures are often faced with a number of arguably effective means of accomplishing their policy goals, and are uniquely suited to choose among those means for the most effective implementation of their policy choices. *See Turner Broadcasting System, Inc. v. FCC,* 520 U.S. 180, 199 (1997) (describing nature of legislative process). The same facts may support different conclusions in the judgment of different decision makers. The protection of privacy and the prevention of fraud are legitimate governmental interests. This Court, therefore, has guarded against the substitution of a court's policy choice for the discretion of the legislature by consistently holding that the validity of time, place or manner regulations "does not turn on a judge's agreement with the responsible decision maker concerning the most appropriate method for promoting significant government interests." *Turner Broadcasting System, Inc.,* 520 U.S. at 218, quoting *United States v. Albertini,* 472 U.S. 675, 689 (1985). Otherwise, courts would face the task of determining whether the chosen legislative scheme was the precisely least intrusive means of achieving its desired end, an approach this Court has consistently refused to require. *Turner Broadcasting System, Inc.,* 520 U.S. at 217-18.

Accordingly, Stratton's determination of the means most suited to its safety purposes, and to protect the privacy of its residents must be reviewed only to determine whether the means chosen are "substantially broader than necessary" to accomplish the governmental interests. *Turner Broadcasting System, Inc.*, 520 U.S. at 218, quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 800 (1989). The legislature's chosen method "need not be the least restrictive or the least intrusive means." *Ward*, 491 U.S. at 798. It simply must be reasonable.

In *Ward*, this court stated:

> Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.

Id. at 798.

Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984). *See also Turner Broadcasting System, Inc.*, 520 U.S. at 215-16; *Frisby v. Schultz*, 487 U.S. 474, 481 (1988).

Legislatures may act to prevent harms from reasonably anticipated results. *See Turner Broadcasting System, Inc.*, 520 U.S. at 212.

Both by its plain terms and its legislative history, the Ordinance does not distinguish favored speech from

disfavored speech on the basis of the ideas or views expressed. Stratton's legislation makes no attempt to single out any topics of speech, such as labor, political or religious speech. Thus, it is not content-based, such as the statutes evaluated in *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) (exempting labor picketing); *Carey v. Brown*, 477 U.S. 455, 461 (1980) (same); *Boos v. Barry*, 485 U.S. 312, 318-19 (1988) (burdening only political speech); *Burson v. Freeman*, 504 U.S. 191, 196 (1992) (same); *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 393-94 (1993) (burdening only religious speech). The Ordinance applies to speech on any topic.

Neither does the Ordinance single out any speech based on the viewpoint of the speaker, unlike the provision invalidated in *R.A.V. v. City of St. Paul*, 505 U.S. 377, 392 (1992) (striking down "bias-motivated crime" ordinance that expressly applied to only one side of a debate). The legislative history shows that the Ordinance was drafted and intended to apply to all.

The approach taken by Stratton's Council is similar to that approved by this Court in *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 737 (1970). *Rowan* recognized that different individuals might find different mailings offensive, and thus upheld a statute which allowed an individual the absolute discretion to invoke the power of the Post Office to prohibit delivery of mail which the individual found offensive against the protests of the senders. *See also Breard v. City of Alexandria*, 341 U.S. 622,

643 (1951) [restriction on unwanted commercial solicitation upheld, distinguishing *Martin v. City of Struthers*, 319 U.S. 141 (1943)].

Stratton's legislation allows the resident to determine whether the speech has a willing listener by the listener's prior registration with the Village of who is welcome and who is not. It is the privacy of the home which is being protected by its resident at the point of persuasion.

III.

FORUM ANALYSIS AND COMPETING CONSTITUTIONAL INTERESTS REQUIRE THAT STRATTON'S REGISTRATION AND PERMIT LEGISLATION NEED ONLY BE REASONABLE.

A forum analysis is determinative of the amount of First Amendment protection required. *Hill v. Colorado*, 530 U.S. 703, 729 (2000) (Kennedy, J., dissenting), *citing Frisby v. Schultz*, 487 U.S. 474 (1988). This analytical tool is vividly portrayed by Justice Scalia's observation in his dissent in *Hill, supra*. He wrote: "The Court today elevates the abortion clinic to the status of the home." *Id.* at 753.

In *International Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672 (1992), the Court considered the right of a religious sect to practice a sect specific ritual that required the face-to-face solicitation of funds in New York City area airport terminals. The Court's analysis first used the "forum based" approach set forth in *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45 (1983), to determine the appropriate level of scrutiny to apply to activity on government property

that clearly fell within the scope of the First Amendment. *International Soc. for Krishna Consciousness, Inc.*, 505 U.S. at 680. After finding that the airport terminals were neither traditional public forums, nor designated public forums, it applied the reasonableness standard that is to be used by courts which are called upon to analyze governmental restrictions on "all remaining public property." *Id.* at 678-80. The Court wrote: "Limitations on expressive activity conducted on this last category of property must survive only a much more limited review. The challenged regulation need only be reasonable, as long as the regulation is not an effort to suppress the speaker's activity due to disagreement with the speaker's view." *Id.* at 679. *See also United States v. Kokinda*, 497 U.S. 720, 727 (1990) ("But regulation of speech activity where the Government has not dedicated its property to First Amendment activity is examined only for reasonableness") and *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37, 45-46 (1983) ("In addition to time, place, and manner regulations, the State may reserve the forum for its intended purposes, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view").

Regulations that protect homeowners' rights of safety, privacy, the freedom to be undisturbed in their homes, should be analyzed according to a standard that is no less liberal than that controlling permissible First Amendment restrictions on government property, as long as those regulations do not substitute the judgment of the community for that of the individual. *United States v. Kokinda*, 497 U.S. 720, 725-26 (1990) ("The Government,

even when acting in its proprietary capacity, does not enjoy absolute freedom from First Amendment constraints, as does a private business, but its action is valid in these circumstances unless it is unreasonable, or . . . 'arbitrary, capricious, or invidious' ") [quoting *Lehman v. Shaker Heights*, 418 U.S. 298 (1974)]; *see also Martin v. City of Struthers*, 319 U.S. 141, 143-44 (1943).

When competing constitutional interests are implicated such as privacy, the Court scrutinizes the legislation's impact on those interests rather than mechanically applying some test. The interests are evaluated to determine whether any one such interest is overly burdened in a manner which is out of proportion to the salutary effects of the competing interest. *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 402 (2000) (Breyer, J., concurring).

The Sixth Circuit Court of Appeals stated that this Court has not set the level of scrutiny to apply to laws that require an individual to obtain a permit before going door to door. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 69a). The Appellate Court utilized the standard for obtaining a permit in a public forum as found in *Forsyth County v. Nationalist Movement*, 505 U.S. 123 (1992). *Forsyth, supra*, sought a determination of whether the law's intrusion on speech were reasonable in the context of time, place and manner. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 70a).

The Court of Appeals then agreed with the District Court that the municipal Ordinance was content neutral and of general applicability. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 70a-71a).

This Court traditionally defers to a construction of a statute agreed upon by the two lower federal courts. *Frisby v. Schultz*, 487 U.S. 474, 482 (1988).

The conclusion that the Ordinance was content neutral and of general applicability is buttressed by a reading of the Ordinance that indicates all who seek to go door to door on private property are required to register. The legislative history adds that the applicability of the Ordinance and the issuance of the permit is just as readily available to the Girl Scout as the Klansman. It, therefore, reveals the evenhandedness of the application of the legislation. (Village Solicitor Frank J. Bruzzese, Tr. 156-157, J.A. 431a-432a). The discussion before the legislative body included a history of actual Village experiences of door-to-door difficulties, e.g., siding, black top sales. (Mayor John Abdalla, Tr. 94-95, J.A. 378a-379a), and late night intrusions. (Village Solicitor Frank J. Bruzzese, Tr. 138, J.A. 416a).

The Mayor regularly receives telephone calls from residents who are being disturbed by door-to-door activity. He was even able to recite the names of those who regularly complain. (Mayor John Abdalla, Tr. 107, J.A. 389a).

Difficulties of fraudulent activity in the area as broadcast by the media was also made known. (Mayor John Abdalla, Tr. 97, J.A. 380a). The location of the community, having only one police officer and a large elderly population, was thought to place the community at risk. (Village Solicitor Frank J. Bruzzese, Tr. 140, J.A. 418a).

Petitioners argue at Section III, pp. 33-38, that Stratton failed to establish that the evils of the legislation it

sought to hinder had in fact occurred. The argument denies the testimony at trial of actual events which had occurred within the Village, the surrounding area and the legislative history. *See City of Erie v. Pap's A.M.*, 529 U.S. 277, 298 (2000). There is no requirement that a community suffer lawlessness before it passes legislation to prevent a perceived evil.

Helen MacMurray, Chief of the Ohio Attorney General Consumer Affairs Section, was provided a hypothetical of Stratton's demographics and locale, and determined that the legislation would be helpful. (Helen MacMurray, Tr. 216-217, J.A. 467a-468a). Stratton's legislation was "preventative medicine" which discouraged fraudulent solicitors from activity within the Village. (Helen MacMurray, Tr. 216, J.A. 467a). The registration information, Ms. MacMurray stated, would be helpful in police investigation, and in addition, registration would serve as an aid to residents to determine the legitimacy of those who go door to door. (Helen MacMurray, Tr. 216-217, J.A. 467a-468a).

IV.

ANONYMITY IS NOT A CONSTITUTIONAL RIGHT, BUT A FACTOR TO BE CONSIDERED IN CONTEXT.

There is no generalized constitutional right to anonymity. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 380 (1995) (Scalia, J., dissenting), *citing Lewis Publishing Co. v. Morgan*, 229 U.S. 288 (1913); *Talley v. California*, 362 U.S. 60, 70 (1960) (Clark, J., dissenting) ("The Constitution says nothing about freedom of anonymous speech").

Anonymity is a factor to be considered along with other First Amendment interests in context. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 358 (1995) (Ginsburg, J., concurring) ("We do not thereby hold that the state may not in other larger circumstances require the speaker to disclose its interest by disclosing its identity").

In *McIntyre, supra*, this Court struck a section of the Ohio Revised Code that required campaign literature to contain the name and address of the person issuing the literature. Margaret McIntyre was charged with violating Ohio law by distributing unsigned leaflets to persons attending a public meeting at a public school in Westerville, Ohio. The purpose of the meeting was to discuss a referendum on a proposed tax levy. The Court found that the speech engaged in by Mrs. McIntyre was indeed core political speech. Handing out leaflets in the advocacy of a politically controversial viewpoint is the essence of First Amendment expression. *Id.* at 347. The fact that the leafleting took place in a public forum, set aside for such discussion, and filled with willing listeners, compelled the conclusion that no form of speech is entitled to greater protection than that of Mrs. McIntyre's. *Id.* at 347.

As a consequence, the Court applied strict scrutiny and found that the ordinance was not narrowly tailored, nor did it serve a compelling state interest. The State argued that its interests in preventing fraud and libelous statements in the election process, and providing the electorate with all relevant information, were nonetheless sufficiently compelling to justify a ban on anonymous speech. The State's arguments were rejected. *Id.* 348-49. The asserted interest in providing the electorate with

relevant information was found insignificant in comparison with the statute's regulation of the message's content. The speaker's identity was found to be no different than any other component of the document, and could be omitted if the writer chose to do so. *Id.* at 348-49. It was held that the prohibition of the distribution of anonymous campaign literature abridges the freedom of speech in violation of the First Amendment. *Citing Talley v. California*, 362 U.S. 60 (1960). The Court also found that the State's interests in preventing fraud and libel, although legitimate, were adequately protected by other Ohio laws. *McIntyre* at 350-51. After setting forth a laundry list of reasons why the statute was not narrowly tailored, the Court declared: "We recognize that a state's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here." *Id.* at 353.

Other Justices, writing in *McIntyre, supra,* also recognized that more legitimate interests of government might justify compelled disclosure of a speaker's identity. Justice Ginsburg recognized that this right of anonymity is not absolute, and that in other, larger circumstances the state may require a speaker to disclose its identity. *Id.* at 358. In dissent, Justice Scalia, joined by the Chief Justice, argued that there was no right to anonymous electioneering, and that it would take decades to "work out the shape of this newly expanded right-to-speak incognito, even in the election field." *Id.* at 381.

Stratton's Ordinance is limited to application upon private property, and furthers police protection and privacy of its citizens. This, when balanced against the right

of intrusion upon private property, provides Stratton's legislation constitutional compliance.

In *Buckley v. American Constitutional Law Foundation,* 525 U.S. 182 (1999), the Court reviewed a Colorado statute which required disclosure of the identity of a person circulating an initiative petition in two distinct instances. The statute required the circulators to wear badges displaying their names while requesting electors to sign the petition, and also required them to sign an affidavit containing the circulator's name, address and other pertinent information at the time the petitions were filed. *Id.* at 189, fn. 6, 7.

The state of Colorado justified its need to identify petition circulators by its strong interest in policing lawbreakers among petition circulators. *Id.* at 196. It claimed that the badge enabled the public to identify and the state to apprehend petition circulators who engage in misconduct. *Id.* at 198.

Both lower courts struck the badge requirement from the statute, but upheld the affidavit requirement. *American Law Foundation, Inc. v. Meyer,* 870 F. Supp. 995 (D. Colo. 1994); *American Law Foundation, Inc. v. Meyer,* 120 F.3d 1092 (10th Cir. 1997). The evidence at trial indicated that the badge requirement inhibited potential circulators from participating in the election process. The witnesses expressed fear of possible recrimination and retaliation while circulating petitions advocating support for volatile issues. *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 197-98 (1999). It was recognized that the inhibiting factor was compelled identification at the point of persuasion. The Tenth Circuit noted that the badge

requirement "forces circulators to reveal their identities at the same time they deliver their political message . . . [and] operates when reaction to the circulator's message is immediate and may be the most intense, emotional and unreasoned." *Id.* at 198-99. The affidavit requirement, on the other hand, was upheld by both lower courts because its identification requirement was distant in time from the point of persuasion. Signing and filing the affidavit after circulation and persuasion was complete did not expose the petition circulator to the risk of "heat of the moment" harassment. By striking the badge provision from the statute, the impediment to participation in the electoral process, and to the full exercise of First Amendment rights, were removed. The lower courts found that the affidavit requirement was not an impediment to the exercise of free speech and more narrowly accomplished the State's asserted interest in apprehending petition circulators who engage in misconduct. Approval of the affidavit requirement was not challenged in appeal to this Court.

On review, this Court approved the reasoning of the lower court striking the badge requirement and further found that it was unconstitutional pursuant to the holding in *McIntyre, supra*. Indeed, the badge requirement was declared to be more injurious to speech than the Ohio law forbidding the distribution of anonymous campaign literature. The petitioner circulator, unlike the pamphleteer, is required to persuade electors to sign the petition. *Buckley* at 199. Consequently, given the intimacy of the contact, and the compelled disclosure of identity at the point of persuasion, the circulator's interest in anonymity was

found to be greater than that of the anonymous pamphleteer. Accordingly, the badge requirement ran afoul of *McIntyre*'s right to engage in anonymous speech. However, the Court went on to further explain that:

> For this very reason, the name badge requirement does not qualify for inclusion among the "more limited [election process] identification requirement[s]" to which we alluded in *McIntyre*. 514 U.S., at 353, 115 S.Ct. 1511 ("We recognize that a State's enforcement interest might justify a more limited identification requirement, but Ohio has shown scant cause for inhibiting the leafleting at issue here."); see *id.*, at 358, 115 S.Ct. 1511 (GINSBURG, J., concurring). In contrast, the affidavit requirement upheld by the District Court and Court of Appeals, which must be met only after circulators have completed their conversations with electors, exemplifies the type of regulation for which *McIntyre* left room.

Buckley at 199-200.

The Ordinance now before the Court presents governmental interests which support the more limited identification requirement contemplated by *McIntyre*. It in no way inhibits anonymous political discourse in any public forum. It does not require the recipient of a Solicitation Permit to wear a badge or outwardly identify themselves in any manner. It does not require a person engaging in door-to-door political discourse to disclose his identity until the resident requests identification. Thus, the disclosure requirements are limited to achieving the compelling governmental interests of securing privacy and deterring crime.

A major distinction between the laws reviewed in *McIntyre, supra,* and *Hill v. Colorado,* 530 U.S. 703 (2000), and the Stratton Ordinance is the location where the message is conveyed. As noted at the outset, the Stratton Ordinance applies only on private property at the residences of those who inhabit the Village. Unlike *McIntyre, supra,* which is limited by its facts to distribution in a public forum and the universal application of the badge requirement in *Buckley, supra,* the Stratton Ordinance applies only on the premises of a Village resident where the privacy interests have been found to prevail over the First Amendment rights of any message sender. *Frisby v. Schultz, supra; Rowan v. United States Post Office Dept., supra.* It is both well recognized and undisputed by Petitioners, that the resident has the right to ban a speaker from delivering any message in the home.

Petitioners level a broadside against the Ordinance by claiming that it is not narrowly tailored. A narrowly tailored statute "targets and eliminates no more than the exact source of the evil it seeks to remedy." *Frisby v. Schultz,* 487 U.S. 474, 485 (1988). The legislation need not be the least restrictive means of regulation, but it must further a significant governmental interest that would be achieved less effectively without the regulation. *See Ward v. Rock Against Racism,* 491 U.S. 781, 798 (1989).

The significant governmental interests of protecting privacy and curbing criminal activity could not be achieved in a less intrusive manner.

The Stratton Ordinance is narrowly tailored to provide would be speakers greater opportunity to spread their message to the unwilling listener than does the

traditional method of placing a "No Trespassing" sign. In Stratton, the unwilling listener in his home can choose the messages he wishes to receive.

On the other hand, the resident who does not file a No Solicitation Registration Form with the Mayor implicitly invites all communication to the residence. This includes and respects the rights of citizens to express political, religious or other messages. The resident who does not avail himself of the protection afforded by Ordinance § 116.07 opens his property to all canvassers/solicitors who have registered for a Solicitation Permit, regardless of whether the message is vocally proclaimed by an unidentified advocate, quietly proclaimed by the anonymous pamphleteer, or proudly disseminated by a readily identified proponent. (Ordinance § 116.07, RBA 6a-7a).

The Stratton Ordinance does not require the permittee to wear a badge or outwardly display his identity in any manner. The permittee is allowed to go door-to-door in the Village, consistent with the invitation to speak anonymously, convey his message, and attempt to persuade the resident that his viewpoint is best. The Ordinance only requires that the canvasser carry in his pocket, or on his person, the permit which was issued by the Village. (Ordinance § 116.04, RBA 4a). It leaves the extent of the invitation to speak anonymously to the discretion of the resident.

Thus, the Stratton Ordinance is not nearly as intrusive on First Amendment rights as was the badge requirement in *Buckley v. American Constitutional Law Foundation, Inc.,* 525 U.S. 182 (1999). Disclosure of a speaker's identity

can only be compelled by the homeowner in the exercise of his own rights, or by a police officer in furtherance of official duties. The right to anonymity on the private property of a Village resident extends no further than the right to engage in any form of speech on the same parcel. The right exists only as long as the resident wishes. The resident can take steps to prevent anonymous discourse on his property to the same extent that he can ban all speech from the home. Once the resident asks a visitor on his property for identification, the right to anonymous discourse ends.

It is difficult to imagine an Ordinance that more perfectly balances the rights guaranteed by the First Amendment and the rights of the unwilling listener at the private residence. The Ordinance burdens speech as little as possible and places in the discretion of the resident the amount, kind and manner of speech or expression that can invade the home.

The simple registration and "permit-in-a-pocket" requirements are narrowly tailored to promote legitimate governmental interests. Chapter 116 of the Codified Ordinances of the Village of Stratton is a fully constitutional exercise of governmental authority.

The Stratton Ordinance requires no loss of anonymity at the point of persuasion. Consistent with this Court's instruction in *Martin v. City of Struthers*, 319 U.S. 141 (1943), registration is conducted regardless of speech content. Registration does not occur at the point of persuasion; it occurs at Village hall. Registration acts as the "automatic trigger" for the permit issuance to go upon

the private property and conduct door-to-door solicitation. The point of persuasion occurs at the time the canvasser decides to knock on the door selected by the canvasser. The only limitation to the delivery of the message is the prohibition of canvassing those potential listeners who have consciously made a decision that they do not wish to be disturbed.

No prior restraint argument is available to Petitioners because no message is prohibited. All can speak at all locations subject to the decision of the resident. Prior restraints typically involve a public official censoring the expression of a message to the public because of its content, *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), or denying use of an entire forum because of speech's content, *Southeastern Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975), all in advance of the actual expression.

The claim that the Mayor has unfettered discretion in granting or denying a permit is without support in the record or by a reading of the Ordinance. The Ordinance supplies the guidance necessary for the completion of the form when it explains that the Mayor may request such additional information to fulfill the inquiries of the registration form. (Ordinance § 116.03(b)(6), RBA 3a-4a).

Stratton's registration provision is not speech. All who wish to exercise First Amendment activity may do so without cost.

The permit issued by the Village upon registration does not identify the canvasser. (Defendants' Exhibit 36,

J.A. 248a).[1] The Ordinance does not dictate the language or form to be utilized as the permit. This is an administrative form used to facilitate the administration of the Ordinance. It, however, indicates registration and the only name on the permit is the name of the Mayor. In practice, the Mayor's name is pre-signed. (Mayor John Abdalla, Tr. 105-106, J.A. 386a-387a).

Thus, the permit does not contravene anonymity other than to indicate registration. Such a "badge" corresponds to an identification device. An identification device has been previously authorized by court decision. *Martin v. City of Struthers,* 319 U.S. 141 (1943).

The display of the permit occurs only in two instances: (1) upon police officer request, or (2) upon request by the person who is being intruded upon, which occurs only upon private property. (Ordinance § 116.04, RBA 4a). The limited disclosure squares with the most minimal requirements to further the compelling governmental interest.

---

[1] The only testimony at trial concerning the content of Stratton's permit is found in the testimony of Mayor John Abdalla, Tr. 105, J.A. 386a. A copy of a blank permit form was provided to the Court through stipulation. (Defendants' Exhibit 36, J.A. 248a). The document was provided to Petitioners during a request for production of documents and was obtained by counsel from the Township Clerk, Connie Rohall. The Village Clerk stated and confirmed in writing the following: (1) The individual/organization is given an application to be filled out; (2) upon the return of the application to the Clerk of the Village of Stratton, a permit is issued; and (3) the permit is not attached to the application. The application is retained by the Clerk of the Village of Stratton for their records. The permit form does not have the name of the individual on it and is pre-signed by Mayor Abdalla.

The permit is not displayed at traditional public fora, or non-traditional public fora under any circumstances because the Ordinance only pertains to private property.

Testimony identified a laundry list of alternative locations in which Petitioners' ministry could be conducted without obtaining registration – in front of a grocery store, tavern, truck stop, restaurant, park, playground, post office, street, any public area, power plant, any mutually agreeable location. (Robert Ciranko, Tr. 43-44, J.A. 331a-333a). In essence, this means at any agreed upon location that the willing listener agrees. The Stratton legislation leaves the political activist with ample alternative channels of communication at these locales and is limited narrowly, even on private property, to deliver any First Amendment message. *See, e.g., Clark v. Community for Creative Non-Violence,* 468 U.S. 288, 298-99 (1984). Thus, they are free to solicit or canvass in Stratton's streets and parks and other traditional forums. They are also able to use the mail, telephone, and internet as they see fit. They may even wait for the resident to leave the confines of his home.

What occurs at the point of persuasion? Anonymity is not compromised for the registrant because no name is on the permit. (Defendants' Exhibit 36, J.A. 248a). The concern of the Court [*Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999)] that at the most critical time of persuasion a name is disclosed does not occur. The physical presence of the canvasser at the door is the loss of anonymity that the Sixth Circuit Court of Appeals referenced. (Opinion of the United States Court of Appeals for the Sixth Circuit, J.A. 76a). It is a voluntary disclosure when the canvasser decides to present himself

uninvited at the door. In *Buckley, supra,* the Court considered the Colorado statute that required the display of the badge during the entire initiative process. Stratton's display of the pocket permit is of the most limited kind, only upon demand upon private property previously determined by the canvasser as appropriate for display, or by a police officer in the furtherance of the registration ordinance. It must be stressed that Buckley's badge had the name or name and sponsoring organization upon it. Stratton has the most limiting approach, simple confirmation of registration.

V.

PETITIONERS' FIRST AMENDMENT OVERBREADTH CHALLENGE FAILS BECAUSE THE ORDINANCE DOES NOT SWEEP TOO BROADLY AND BECAUSE IT IS DIRECTED TO PLACE.

As the Court stated in *Broadrick v. Oklahoma,* 413 U.S. 601 (1973), "Application of the overbreadth doctrine . . . is manifestly strong medicine. It has been employed by the court sparingly and only as a last resort." *Id.* at 613.

The doctrine presumes the enactment is constitutional as applied to thwart gratuitous wholesale attacks. In *Bd. of Trustees of State Univ. of N.Y. v. Fox,* 492 U.S. 469 (1989), the Court stated:

> It is not the usual judicial practice, however, nor do we consider it generally desirable, to proceed to an overbreadth issue unnecessarily – that is, before it is determined that the statute would be valid as applied. Such a course would convert use of the overbreadth doctrine from a necessary means of vindicating the plaintiff's own

> right not to be bound by a statute that is unconstitutional into a means of mounting gratuitous wholesale attacks upon state and federal laws.

Id. at 484-85. Petitioners challenge to the Stratton Ordinance denies this admonition.

To find a statute unconstitutionally overbroad, its "overbreadth . . . must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oaklahoma,* 413 U.S. at 615. The party challenging the enactment must show that its potential application reaches a significant amount of protected speech.

In *Broadrick, supra,* the Court examined a regulation placing restrictions on political campaign activity by public employees. The employees made a facial challenge to the statute arguing that it could be applied to protected political expression as the wearing of political buttons or the displaying of bumper stickers. This Court upheld the statute. The Court acknowledged some overbreadth, but upheld the statute because the act was "not substantially overbroad," and that whatever overbreadth may have existed "should be cured through case by case analysis of the fact situations. . . . " *Id.* at 615-16. *See also Houston v. Hill,* 482 U.S. 451, 458-59 (1987) (overbreadth must be substantial).

Petitioners have previously alleged that Stratton's Ordinance unconstitutionally interfered with their religious activity in both a facial and as applied Constitutional challenge. Both the District Court and the Court of Appeals found the legislation constitutional. Facial overbreadth challenges posit a hypothetical plaintiff before

this Court. *See City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801 (1984). This is an additional factor which limits application of the doctrine.

Anonymity of the petition circulator in core political speech activities stands no differently than Petitioners. The potential plaintiff on the limited issue of anonymity stands with the person who must register to propose his religious based intrusion.

In *Hill v. Colorado*, 530 U.S. 703 (2000), the Court examined a First Amendment overbreadth claim. The Court stated:

> * * * [T]he overbreadth doctrine enables litigants to "challenge a statute, not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's every existence may cause others not before the court to refrain from constitutionally protected speech or expression." Moreover, "particularly where conduct and not merely speech is involved, we believe that the overbreadth of a statute must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep." *Id.*, at 615, 93 S.Ct. 2908. Petitioners have not persuaded us that the impact of the statute on the conduct of other speakers will differ from its impact on their own sidewalk counseling. Cf. *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 801, 104 S.Ct. 2118, 80 L.Ed.2d 772 (1984).

Id. at 731-32.

Petitioners argue for overbreadth relief at the same time they claim that religious speech is equivalent to political speech. Petitioners' Brief, p. 23. No evidence is

advanced in furtherance of any dissimilarity. It is Petitioners' obligation to present evidence and identify the distinction to allow the application of the overbreadth doctrine. Where the sweep of the legislation is equivalent in the evaluation of the actual plaintiff and the hypothetical plaintiff, facial overbreadth does not extend beyond the legitimate sweep of the previously determined constitutional challenge. Future Constitutional attacks may be considered on a case by case basis. Therefore, it cannot be said that the Ordinance is substantially overbroad.

The overbreadth doctrine is limited to First Amendment activity.

In *Hill v. Colorado*, 530 U.S. 703 (2000), this Court determined that a state statute which regulated the location of where speech occurred, a zone away from a health care facility on a traditional public forum, a sidewalk, only implicated the location where First Amendment activity occurred. The Court concluded that an overbreadth analysis was not applicable. The Stratton Ordinance is directed to location upon private property, not speech. With this conclusion, an overbreadth challenge is also unavailable.

CONCLUSION

Petitioners present the Court an inaccurate portrayal of the Stratton Ordinance as providing a flat ban on many types of expressive activity unless permitted by an unrestrained mayor. In their quest to establish the alleged unconstitutionality of the Ordinance, the Petitioners stray far from the limited scope of this Court's writ, raising

many issues that have no bearing on overbreadth. Regardless, a review of the Ordinance and the evidence presented at trial establishes that the Ordinance was designed with great care by the Village Solicitor to accommodate a plethora of constitutional considerations while at the same time promoting the interests of the Village. The Village Solicitor, in order to accommodate all rights and interests, invited counsel for the Petitioners to participate in the creation of the Ordinance. (Defendants' Exhibit 17, J.A. 128a-134a). It is the product of both that input and careful study of this Court's First Amendment jurisprudence regarding permissible restrictions on door-to-door activity and the privacy rights of individual homeowners to the quiet enjoyment of their homes.

The result of the Village Solicitor's endeavor is an ordinance which is, and has been found to be, content neutral and of general applicability by both the District Court and the Sixth Circuit Court of Appeals, and is a reasonable accommodation of competing interests. It is a perfect balance of the competing rights of free expression and the rights of the unwilling listener in his home. The Ordinance neither censors speech, nor restricts any message from being delivered to a willing listener. There is no restriction on the exercise of any expressive activity in a traditional public forum or on private property that permits such expression. It provides a registration format only for those who will be entering upon Village residences that is easily completed and is accommodating to the speaker's rights to anonymity. The Mayor is mandated to issue a permit to all those who register. (Ordinance § 116.04, RBA 4a). The Mayor's right to deny or revoke a permit is narrowly circumscribed. (Ordinance § 116.06,

RBA 5a). The permittee is required to carry, but not display, the permit, and is not required to identify himself in any outward manner. Display of the permit occurs only to a police officer in furtherance of his duties or the person who is intruded upon at his private property. Lastly, the Ordinance allows those residents who wish to be left alone in their homes the opportunity to register at the Village hall and notify would be applicants for a solicitation permit that they are not to be disturbed unless the resident has expressly excluded the permittee from the prohibition. (Ordinance § 116.07, RBA 6a-8a).

Chapter 116 is necessary to accomplish the protection of well-established governmental interests and is narrowly tailored to accomplish those goals leaving reasonable alternate channels of communication. Anonymity is reasonably accommodated under the competing circumstances. For the foregoing reasons, the Village of Stratton and its Mayor request that this Court affirm the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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APPENDIX – ORDINANCE NO. 1998-5

ORDINANCE NO. 1998-5

ORDINANCE REGULATING UNINVITED PEDDLING AND SOLICITATION UPON PRIVATE PROPERTY IN THE VILLAGE OF STRATTON, OHIO, AND AMENDING ORDINANCE NO. 1996-6 OF THE ORDINANCES OF THE VILLAGE OF STRATTON, OHIO.

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that Ordinance No. 1996-06 of the Ordinances of the Village of Stratton, Ohio, which was passed on September, 1996, is hereby amended, by replacing the language of said Ordinance No. 1996-06 in its entirety, with the following language:

BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF STRATTON, OHIO, that, pursuant to authority granted in Section 715.61 of the Ohio Revised Code, and pursuant to Home Rule powers vested in the Village under Section 3, Article XVIII of the Ohio Constitution, the Codified Ordinances of the Village of Stratton, Ohio are hereby amended by the adoption of the following Chapter and Codified Ordinance Sections.

CHAPTER 116

Peddlers and Solicitors

116.01 Uninvited peddling and soliciting declared a nuisance.
116.02 Enforcement.
116.03 Solicitor's Registration and Permit – Prohibition of unregistered solicitation, etc.
116.04 Issuance of permit; fee, content and display; effect.
116.05 Time limitations.

116.06 Denial or Revocation of permit.
116.07 Owner/occupant prohibition – "No Solicitation" Registration.
116.98 Penalty.

CROSS REFERENCES

Power to inspect food products – see Ohio R.C. 715.46
Power to regulate. see Ohio R.C. 715.61 et seq.
Home solicitation sales – see Ohio R.C. 1345.21 et seq.
Charitable solicitations – see Ohio R.C. Ch. 1716
Trespassing – see Ohio R.C. 2909.21
Frozen desserts – see Ohio R.C. 3717.51 et seq.
Littering – see Ohio R.C. 3767.20

116.01 UNINVITED PEDDLING AND SOLICITING DECLARED A NUISANCE.

The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

116.02 ENFORCEMENT.

The Chief of Police (Village Marshall) and Village Police Officers are hereby required and authorized to abate any such nuisance as is described in Section 116.01.

116.03 REGISTRATION REQUIRED – PROHIBITION OF UNREGISTERED SOLICITATION, ETC.

(a) No canvasser, solicitor, peddler, hawker, itinerant merchant or transient vendor of merchandise or services who is described in Section 116.01 of this Chapter and who intends to go in or upon private property or a private residence in the Village for any of the purposes described in Section 116.01, shall go in or upon such private property or residence without first registering in the office of the Mayor and obtaining a Solicitation Permit.

(b) The registration required by subsection (a) hereof shall be made by filing a Solicitor's Registration Form, at the office of the Mayor, on a form furnished for such purpose. The Form shall be completed by the Registrant and it shall then contain the following information;

(1) The name and home address of the Registrant and Registrant's residence for five years next preceding the date of registration;

(2) A brief description of the nature and purpose of the business, promotion, solicitation, organization, cause, and/or the goods or services offered;

(3) The name and address of the employer or affiliated organization, with credentials

from the employer or organization showing the exact relationship and authority of the Applicant;

(4) The length of time for which the privilege to canvass or solicit is desired;

(5) The specific address of each private residence at which the Registrant intends to engage in the conduct described in Section 116.01 of this Chapter; and,

(6) Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired.

116.04 ISSUANCE OF PERMIT; FEE, CONTENT AND DISPLAY.

Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit. The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter. No permittee shall go in or upon any premises not listed on the Registrant's Solicitor's Registration Form.

Each person shall at all times, while exercising the privilege in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited.

Section 116.01 of this Chapter shall not apply and shall not be construed to apply to the holder of a valid permit issued pursuant to this Section.

116.05 TIME LIMITATIONS.

No activity permitted under authority of this chapter shall commence prior to 9:00 a.m. nor continue after 5:00 p.m. This time limitation shall be stated on the permit.

116.06 DENIAL OR REVOCATION OF PERMIT.

Permits described in Section 116.04 of this Chapter may be denied or revoked by the Mayor for any one or more of the following reasons:

(a) Incomplete information provided by the Registrant in the Solicitor's Registration Form.

(b) Fraud or misrepresentation contained in the Solicitor's Registration Form.

(c) Fraud, misrepresentation or false statements made in the course of conducting the activity.

(d) Violation of any of the provisions of this chapter or of other Codified Ordinances or of any State or Federal Law.

(e) Conducting canvassing, soliciting or business in such a manner as to constitute a trespass upon private property.

(f) The permittee ceases to possess the qualifications required in this chapter for the original registration.

The revocation of a permit shall be in addition to any penalty provided in Section 116.99 of the Codified Ordinances of the Village of Stratton, Ohio, or any other penalty that may be imposed upon the permittee in accordance with law.

116.07 OWNER'S/OCCUPANT'S PROHIBITION AGAINST ENTRY.

(a) Notwithstanding the provisions of any other Section of this Chapter 116, any person, firm or corporation who is the owner or lawful occupant of private property within the territorial limits of the Village of Stratton, Ohio, may prohibit the practice of going in or upon the private property and/or the private residence of such owner or occupant, by uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors, by registering its property in accordance with Subdivision (b) of this Section and by posting upon each such registered property a sign which reads "No Solicitation" in a location which is reasonably visible to persons who intend to enter upon such property.

(b) The registration authorized by Subsection (a) hereof shall be made by filing a "No Solicitation Registration Form", at the office of the Mayor, on a form furnished for such purpose. The form shall be completed by the property owner or occupant and it shall then contain the following information:

(1) The name and address of the owner or occupant who wishes to prohibit uninvited canvassing, soliciting, peddling, hawking, merchandising and/or transient vending upon the private property of the owner or occupant;

(2) The specific address of each property at which the owner or occupant prohibits such conduct; and,

(3) A written and signed statement which reads:

"I, the undersigned, am the owner or lawful occupant of private property which is described in this No Solicitation Form, and I, hereby, give notice that I prohibit the practice of uninvited canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors coming upon my private property for the purpose of soliciting the attention of any occupant of that property or for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sales of any product.

I have posted a sign which reads, "No Solicitation", at the property, and the sign is located so that it is reasonably visible to persons who might be considering entering upon the property.

I consider any person entering upon the property for a prohibited purpose to be a trespasser.

The only exceptions to this prohibition are the persons and organizations listed below:

_____

_____

_____

_____

_____

_____

_____

_____"

(c) No uninvited canvasser, solicitor, peddler, hawker, itinerant merchant or transient

vendor of merchandise or services, shall go in or upon the private property of an owner or occupant of property who has registered and posted such property in accordance with Subsections (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

(d) The holder of a permit issued pursuant to Section 116.04 of this Chapter shall not be exempt from the prohibition contained in Subsection (c) of this Section. The holder of such permit shall not go in or upon any private property which has been registered and posted in accordance with Subsection (a) and (b) of this Section, for the purpose of advertising, promoting, selling or explaining any product, service, organization or cause, or for the purpose of soliciting orders for the sale of goods, wares, merchandise or services.

116.99 PENALTY.

(a) Violation of Section 116.01 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(b) Violation of Section 116.03 is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(c) Violation of Section 116.07(c) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

(d) Violation of Section 116.07(d) is a misdemeanor of the fourth degree, the penalty for which is set forth in Section 999.99 of the Codified Ordinances of the Village of Stratton, Ohio.

SECTION 2: This Ordinance is hereby declared to be an emergency Ordinance, necessary to the preservation of the public peace, safety and welfare of the citizens of the Village of Stratton, Ohio, and such emergency exists by reason of the fact that the failure to regulate the time and manner of the conduct which is regulated by the above Ordinance, and the failure to identify those engaged in such conduct, creates a risk of unwanted intrusion, annoyance and potential harm to Village residents who are less able, than the Village, to identify and regulate the conduct of persons, corporations, entities and organizations engaged in such conduct.

SECTION 3: This Ordinance shall be in full force and effect immediately upon its passage.

/s/ John M. Abdalla
MAYOR

ATTEST: s/ Lola Kakascik
CLERK

PASSED: 7/22/98

Supreme Court, U.S.
FILED
FEB 12 2002
CLERK

(17)

No. 00-1737

IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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STATEMENT PURSUANT TO RULE 29.6

Petitioners' Rule 29.6 Statement was set forth at page ii of the Petition for a Writ of Certiorari, and there are no amendments to that Statement.

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Kristi E. Swartz, *Fake Jehovah's Witnesses Steal Woman's $600*, Herald Sun, Jan. 5, 1999 19

ARGUMENT

I. Stratton does not dispute that the Ordinance precludes anonymous political discourse.

a. To avoid the issue of anonymity, Stratton recasts the question presented.

Rather than address the question this Court has agreed to review, Stratton poses and discusses an issue not presented in this case. In so doing, Stratton fails to address a major issue before the Court — how does its Ordinance, that requires one to reveal his or her name to the Mayor to obtain a permit, not violate the First Amendment protection accorded to anonymous political pamphleteering or discourse?

Stratton recasts the question presented to focus on the protection of "an unwilling listener at his home." *Brief for Respondents* at i. Jehovah's Witnesses are not challenging and have never challenged the right of an unwilling listener to shield himself from all or certain unwanted messages.

Stratton's residents can post a "No Trespassing" sign and keep all away from their door. Residents can post a "No Solicitation" sign pursuant to section 116.07 of the Ordinance and "decide for themselves what speech they are willing to hear on their property." *Brief for Respondents* at 9. Even without a sign, residents can simply tell a caller to leave. Use of any of these measures amply protects the "unwilling listener."

In focusing on the "unwilling listener," Stratton attempts to deflect attention from the question actually presented for review — whether its Ordinance violates the First Amendment protection accorded anonymous political

discourse. Stratton fails to address the effect of the Ordinance, which requires a person to surrender anonymity by disclosing his or her name, address, description of the message, and the organization he or she is affiliated with to the office of the Mayor prior to going from door to door. Ord. § 116.03(b)(1), (2), (3) (MBA 4a). In the process, the right of a speaker to engage in anonymous political discourse has been eliminated.

Stratton does not explain how disclosure of one's name, address, and organizational affiliation to the Mayor (which is kept as a public record) can somehow coexist with the protection accorded core political speech — the "respected tradition of anonymity in the advocacy of political causes." *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 343 (1995). Rather, the Village asserts that "[t]here is no generalized constitutional right to anonymity." *Brief for Respondents* at 22. This assertion rests on nothing more than the dissents in *McIntyre* and *Talley v. California*, 362 U.S. 60 (1960), and ignores their holdings, which protect anonymous political discourse.

Since the Ordinance compels name disclosure, it is a content-based regulation of speech, which requires the application of strict scrutiny. Stratton fails to address this or to contend that the Ordinance can survive that exacting examination.

b. The Ordinance and the permit require identity disclosure at the resident's door.

The Village concedes that its Ordinance does indeed require disclosure of one's identity at the door:

> [The Ordinance] does not require a person engaging in door-to-door political discourse to disclose his identity **until** the resident requests identification.

Brief for Respondents at 27 (emphasis added).

> Disclosure of a speaker's identity can only be **compelled** by the homeowner in the exercise of his own rights, or by a police officer in furtherance of official duties.

Brief for Respondents at 29-30 (emphasis added).

The plain language of the permit utilized by the Village indicates that the applicant's name appears on it. The permit says:

> PERMIT TO CANVASS TO SOLICIT, ETC.
>
> In accordance with the provisions of Section 116.04 of the Codified Ordinances of the Village of Stratton, Ohio, the Mayor of the Village of Stratton, Ohio has issued to **the above Applicant** a Permit, authorizing the Applicant to canvass, solicit, peddle, hawk . . . .

(Defendants' Trial Exhibit 36, Blank 'Permit to Canvass to Solicit, Etc.' Form, Tr. 86, J.A. 248a) (emphasis added).

The Sixth Circuit recognized that a speaker's name would appear on the permit and therefore would be revealed to the resident at his door:

> As we see it, individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities — their physical identities — to the residents they canvass. In other words, the ordinance does not require canvassers going door-to-door to reveal their identities; instead, the very act of going door-to-door requires the canvassers to reveal a portion of their identities.

> While the ordinance requires political canvassers to reveal the remainder of their identities, i.e., their names, we do not believe that requirement rises to the level of impinging on First Amendment protected speech.

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d 553, 563 (CA6 2001) (J.A. 76a-77a).

In *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999), this Court was virtually unanimous in agreeing that compulsory name disclosure at the point of one-on-one communication violates constitutional protections accorded anonymous political discourse. To avoid the application of *Buckley*, the Village relies on material outside the record to contend that the permit does not in fact contain the applicant's name. *Brief for Respondents* at 32 n.1 (referring to non-record letter).

Assuming, *arguendo*, that the permit does not contain the speaker's name, then the permit scheme is ineffectual. The resident would not know who the speaker is even if shown the permit. A nameless permit could be transferred from person to person or copied and distributed to others.

In any event, the Ordinance states: "The permit shall indicate that the applicant has registered as required by Section 116.03 of this Chapter." Ord. § 116.04 (MBA 5a). This language would allow this or any future Mayor to require that the applicant's name be placed on the permit. The Ordinance's requirement of compulsory name disclosure is incompatible with the protection accorded anonymous political pamphleteering or discourse.

II. The overbreadth doctrine is applicable because the Ordinance's impact on Petitioners is different from its impact on those desiring to engage in anonymous political discourse.

Rather than being the gratuitous wholesale attack as characterized by Stratton, the application of the overbreadth doctrine is well warranted to strike down its criminalization of unlicensed anonymous political discourse.

Stratton fails to appreciate "'the transcendent value to all society of constitutionally protected expression.'" *Los Angeles Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. 32, 38 (1999) (quoting *Gooding v. Wilson*, 405 U.S. 518, 521 (1972)). Stratton fails to realize that "First Amendment challenges to statutes based on First Amendment overbreadth . . . [are] 'deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression.'" *Id.* (quoting *Gooding*, 405 U.S. at 521).

The use of this doctrine for purposes of facial invalidation is proper since this is a "case in which the government is prohibiting a speaker from conveying information that the speaker already possesses." *Los Angeles Police Dep't v. United Reporting Publishing Corp.*, 528 U.S. at 40. Stratton prohibits the anonymous speaker from conveying a political message, thereby creating more than a theoretical "possibility that protected speech will be muted." *Bates v. State Bar of Arizona*, 433 U.S. 350, 380 (1977).

The Village attempts to justify this suppression of expression by relying upon *Hill v. Colorado*, 530 U.S. 703 (2000). First, it argues that "[a]nonymity of the petition

circulator in core political speech activities stands no differently than Petitioners." *Brief for Respondents* at 36. Stratton claims, thereby, to fall within *Hill*'s statement that "Petitioners have not persuaded us that the impact of the statute on the conduct of other speakers will differ from its impact on their own sidewalk counseling." *Hill v. Colorado*, 530 U.S. at 732. The Village is mistaken.

Jehovah's Witnesses have never advocated an interest in maintaining anonymity at a resident's door. Even if the Court were to uphold the Ordinance, if he or she chose to do so, one of Jehovah's Witnesses could obtain a permit and preach from door to door. There would be no legal impediment to doing so. In contrast, one who wanted to engage in anonymous political speech could not obtain a permit and preach his message in an anonymous fashion from door to door. The very act of obtaining a permit destroys his anonymity. He would be banned from advocating his political message anonymously from door to door in Stratton. Thus, the 'plain sweep' of Stratton's Ordinance causes a "real" and "substantial" impact on pure speech. *Id.*

This ban on anonymous political discourse negates the Village's contention that the Ordinance is directed to place, private property, not speech. Contrary to Colorado's statute at issue in *Hill*, which did not "'ban' any messages, . . . literature, or oral statements [but] merely regulate[d] the places where communications may occur," *id.* at 731, Stratton bans, as opposed to "merely regulates," door-to-door anonymous political discourse. In so doing, it entirely forecloses this venerable and traditional means of one-on-one communication.

As this Court noted in *Hill*, under Colorado's statute "absolutely no channel of communication is foreclosed. No speaker is silenced. And no message is prohibited."

Id. at 734. In Stratton, anonymous door-to-door advocacy is foreclosed. Anonymous speakers are silenced. Anonymous messages are prohibited.

The Village's reliance on *Hill* is also misplaced in that Colorado's statute dealt only with the protection of the unwilling listener, as opposed to Stratton's, which seeks to encumber all listeners:

> It is . . . important . . . to recognize the significant difference between state restrictions on a speaker's right to address a willing audience and those that protect listeners from unwanted communication. This statute deals only with the latter.

Id. at 715-16.

The majority of Stratton's population are a willing audience in that they did not avail themselves of the Ordinance's provisions pursuant to section 116.07, restricting door-to-door communication.[1] *Brief for Respondents* at 29 ("the resident who does not file a No Solicitation Registration Form with the Mayor implicitly invites all communication to the residence"). Interestingly, among the 21 filings of owners or occupants who did restrict access are seven individuals associated with the Village government, among them the Mayor, his former and current Village clerks, the Chief of Police, and three Village council members. All seven indicated they did not want visits from Jehovah's Witnesses. (Defendants' Trial Exhibits 34f, 34g, 34h, 34i, 34k, 34m, 34o, No Solicitation Registration Form, Tr. 86, J.A. 182a-211a). Stratton's scheme revokes the implicit invitation of

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1. Of Stratton's 278 residents, only 32 have filed a total of 21 No Solicitation Registration Forms with the Village. (Mayor John Abdalla, Tr. 91; Defendants' Trial Exhibits 34a-u, No Solicitation Registration Form, Tr. 86, J.A. 167a-229a).

those presumably willing residents who did not file with the Village and in the process restricts their right to hear information without the knowledge of the government.

As this Court recognized in *Hill*, the protection of speech to a willing audience has a solid foundation. "Private citizens have always retained the power to decide for themselves what they wish to read, and within limits, what oral messages they want to consider." *Hill v. Colorado*, 530 U.S. at 734. In Stratton, a private citizen does not have the right to decide for himself to receive anonymous political messages at his home. By restricting the content of messages, Stratton places itself outside *Hill*.

Stratton is confused by Jehovah's Witnesses' assertion that the Ordinance also impermissibly abridges religious speech. That assertion reinforces the substantial overbreadth of the Ordinance.

Jehovah's Witnesses have consistently argued that the Ordinance is also facially unconstitutional in that it impermissibly encumbers religious speech. The Witnesses submit that the claim that religious speech is unconstitutionally abridged by the Ordinance's substantial overbreadth is "fairly included" within the question presented. Their claim is not just one of "technical overbreadth" in that the Ordinance violated the rights of others, but also "included the contention that the [O]rdinance was 'overbroad' in the sense of restricting more speech than the Constitution permits, even in its application" to Jehovah's Witnesses. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 381 n.3 (1992). Just as the Ordinance need not reach core political speech to achieve stated municipal interests, it need not reach pure religious speech either. Therefore, the issue is properly presented for review, and application of the overbreadth doctrine is properly applied to hold the Ordinance facially unconstitutional.

III. The Court has never subjected speech unconnected to the solicitation of funds to a registration-identification scheme.

The Village states that in *Martin v. City of Struthers*, 319 U.S. 141 (1943), the Court "concluded that the rights of the unwilling listener to be secure in the privacy of his home trumped a speaker's interest in pursuit of religious or political activity. *Id.* at 157" and expressly authorized a "registration mechanism that required establishment of identity and authority to act on behalf of a cause." *Brief for Respondents* at 14. The Village fails to identify the first statement as being to Justice Reed's dissent in *Martin*, which was quite opposite the Court's holding. The second statement mischaracterizes *Martin*'s dicta with respect to the permissible scope of municipal registration schemes. In relying on dissent and mischaracterization of dicta, the Village exposes the lack of authority for the Ordinance's prior restraint on the dissemination of ideas. The Court has never subjected pure speech to the pre-condition of a registration-identification scheme.

Martin struck down a prohibition on door-to-door distribution of literature, holding that "[t]he dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors." *Id.* at 147. Moreover, as this Court recently observed in *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182, 200 n.20 (1999), it was only in dictum that the *Martin* Court "noted that 'a stranger in the community' could be required to establish his identity and authority to act for the cause he purports to represent." Further, in making this statement, the *Martin* Court was quoting *Cantwell v. Connecticut*, 310 U.S. 296 (1940):

> Without doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the

> community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Id. at 306. *Cantwell* clearly spoke to identification only with reference to speech connected with the solicitation of funds.

If Stratton had written its Ordinance to regulate only the solicitation of funds, this case would not be before this Court. Jehovah's Witnesses were not going from door to door seeking funds, but to speak to residents about the Bible and offer, at no cost, Bible-based literature. Such an ordinance would not apply to them, nor to individuals seeking to engage in any political discourse unconnected to seeking funds.

The Court has previously considered the extent to which the government may require identification as a pre-condition to the exercise of First Amendment rights. In striking down a statute requiring a labor union organizer to identify himself to the State in writing before making a public speech, the Court held:

> If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order.

Thomas v. Collins, 323 U.S. 516, 540 (1945).

The Court then noted the difference between pure speech and speech connected with the solicitation of funds:

> Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the State might regulate, in Schneider v. State[2] . . . and Cantwell v. Connecticut.

Id. at 540.

In holding that the state's registration requirement was an impermissible prior restraint on pure speech activities, the Court noted that no solicitation of funds was involved. *Id.* at 533. The Court also rejected the state's argument, which is remarkably similar to Stratton's, that the "statute 'is a registration statute and nothing more,' and confers only 'ministerial and not discretionary powers' upon" the state official. *Id.* at 526. As the Court aptly noted:

> The restraint is not small when it is considered what was restrained. The right is a national right, federally guaranteed. There is some modicum of freedom of thought, speech and assembly which

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2. In this context, *Schneider* spoke to speech connected with the solicitation of funds: "the common type of ordinance requiring some form of registration or license of hawkers or peddlers." *Schneider v. New Jersey*, 308 U.S. 147, 163 (1939).

> all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty.

Thomas v. Collins, 323 U.S. at 543.

Neighbor-to-neighbor speech unconnected to the solicitation of funds falls within that 'modicum of freedom of thought and speech' that must not be restrained or impeded.

Stratton impermissibly attempts to criminalize core speech that is uttered without prior registration. This it simply cannot do. "Where core First Amendment speech is at issue, the State can assess liability for specific instances of deliberate deception, but it cannot impose a prophylactic rule requiring disclosure even where misleading statements are not made." *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 803 (1988) (Scalia, J., concurring in part and concurring in judgment).

IV. The Ordinance imposes an impermissible prior restraint.

By focusing on the "unwilling listener," Stratton attempts to deflect attention from what the Ordinance actually is — an impermissible prior restraint of expression. The Village contends that "[n]o prior restraint argument is available to Petitioners because no message is prohibited." *Brief for Respondents* at 31. Besides being an incorrect statement of

law, its contention ignores the fact that anonymous door-to-door political discourse is prohibited. Such prior restraint does not pass constitutional muster.

"[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). In *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215 (1990), Justice O'Connor (joined by Justices Stevens and Kennedy) noted: "While '[p]rior restraints are not unconstitutional *per se* . . . [a]ny system of prior restraint . . . comes to this Court bearing a heavy presumption against its constitutional validity.'" *Id.* at 225 (citing *Lovell v. City of Griffin*, 303 U.S. 444 (1938), and *Cantwell v. Connecticut*, 310 U.S. 296 (1940)). The Village fails to overcome this "heavy presumption" against the validity of a scheme that imposes a prior restraint upon speech. It fails to explain why this Court, for the first time in American history, should endorse a requirement that a publisher (Watchtower) obtain government approval before circulating its literature without charge. *See Talley v. California*, 362 U.S. 60, 64 (1960) (citing *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) ("There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value.'")).

It is clear that Stratton applies the Ordinance to the distribution of literature. It has specifically applied its Ordinance against Watchtower, one of the largest publishers in the world. (Defendants' Trial Exhibit 24, Letter from Frank Bruzzese to Richard Moake (Sept. 9, 1998), Tr. 86, J.A. 162a-166a). At the time of the district court hearing, the average biweekly printing of the *Watchtower* magazine was

22,103,000 in 128 languages, and *Awake!* was 19,617,000 in 81 languages. (Plaintiffs' Trial Exhibits 6N and 6O, Tr. 86). Over 98,600,000 copies of *The New World Translation of the Holy Scriptures* have been printed in multiple languages (Plaintiffs' Trial Exhibit 6C, Tr. 86), and 62,650,000 copies of the Bible study aid *Knowledge That Leads to Everlasting Life* have been published in 126 languages. (Plaintiffs' Trial Exhibit 6E, Tr. 86). The material published by Watchtower is distributed by individual Jehovah's Witnesses in their public ministry (Robert Ciranko, Tr. 18, J.A. 312a-313a), and is left with residents free of charge (Robert Ciranko, Tr. 21, J.A. 316a).

The Village cites no authority that would entitle it to abridge the freedom of the press through its permit scheme. The Court has consistently struck down attempts to subject the press to pre-publication licensing. These holdings have confirmed the First Amendment's prohibition of "government restraints upon expression." *Thomas v. Chicago Park District*, __ U.S. __, No. 00-1249, 2002 WL 46757 at 3. "[T]he core abuse against which [the First Amendment] was directed was the scheme of licensing laws implemented by the monarch and Parliament to contain the 'evils' of the printing press in 16th- and 17-century England." *Id.* Such protection safeguards free expression, which is, as Justice Cardozo stated, "the matrix, the indispensable condition, of nearly every other form of freedom." *Palko v. Connecticut*, 302 U.S. 319, 327 (1937).

The Court has always been reluctant to uphold prophylactic attempts to regulate all speech. Rather, it has preferred to uphold prosecutions of speech that actually cause harm. Here, Stratton punishes speech that is disseminated without its permission, even if that speech lies at the core of the First Amendment. This it cannot do.

> Prior restraints are particularly anathematic to the First Amendment, and any immunity from

> punishment subsequent to publication of given material applies A fortiori to immunity from suppression of that material before publication.

Nebraska Press Ass'n v. Stuart, 427 U.S. 539, 598 (1976) (Brennan, J., concurring).

The Village argues that the Ordinance is not an impermissible prior restraint because the Mayor has no discretion in issuing permits. It fails to comment, however, on the fact that its Mayor evidently thinks he has such discretion. He has acted as if he had discretion in granting after-hour permits and would use his discretion to deny permits to those unaffiliated with an organization. *Brief for Petitioners* at 27.

The Village also fails to address the Court's holding in *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 769 (1988), that language similar to Stratton's, impermissibly permitted unbridled discretion:

Stratton	Lakewood
Such other information concerning the Registrant and its business or purpose as may be reasonably necessary to accurately describe the nature of the privilege desired. Ordinance § 116.03(b)(6) (MBA 4a).	[S]uch other terms and conditions deemed necessary and reasonable by the Mayor.

To argue away any appearance of discretion, the Village wants this Court to credit the Mayor's testimony that he pre-signs his name on the permit. *Brief for Respondents* at 32. Yet, should this Court not also credit the testimony that people move to Stratton with the understanding that they would not

be bothered by Jehovah's Witnesses (Tammy Tuckosh, Tr. 77, J.A. 362a); that he understands no one in the Village wants to listen to Jehovah's Witnesses (Mayor John Abdalla, Tr. 129, J.A. 410a); and that Jehovah's Witnesses are preaching their "so-called gospel"? (Mayor John Abdalla, Tr. 128, J.A. 408a).

Stratton is completely silent as to this discriminatory animus expressed towards Jehovah's Witnesses. It does not explain why this should not at least give the Court pause in sanctioning a prior restraint scheme with this Mayor so intimately involved. The purpose of anti-licensing laws was to keep a weapon of suppression from the hands of a possible censor. Mayor Abdalla has successfully suppressed the "so-called gospel" of Jehovah's Witnesses for three years. Do we really need to wait until he attempts to censor the "so-called" message of an opposing political party before this censorial weapon is removed from his hands?

Sadly, in attempting to justify its scheme, Stratton devalues the status of First Amendment interests in the hierarchy of American values. Rather than view door-to-door political discourse as the lifeblood of a vibrant democracy, the Village views such speech as something "residents will *endure* in the privacy of their homes" and which happens after "*intrusion* upon private property." *Brief for Respondents* at 9, 25 (emphasis added). Apart from expressing its distaste for the free exchange of thought, the Village never explains why it must ban and regulate speech to protect its residents from fraud and invasion of privacy. It does not address why prosecuting laws already on the books would not sufficiently address its interests. It fails to comment on why regulating only commercial speech would not sufficiently address its interests.

Stratton also ignores the limited scope of its expert's testimony. Associate Attorney General Helen MacMurray, section chief of the Ohio Attorney General's Consumer Protection section, testified that the Ordinance would be "helpful" in addressing Stratton's interests in fraud prevention:

> Q. [D]o you have an opinion whether an ordinance such as the one that you have before you would be helpful in combatting consumer fraud and related consumer problems in door-to-door solicitations?
>
> A. Yes, I have an opinion.
>
> Q. What is that opinion?
>
> A. My opinion is it would indeed be helpful.

(Helen MacMurray, Tr. 216, J.A. 467a).

> Q. Is it fair to state that your opinion is limited to the fact that this ordinance would be helpful in the prevention of fraud and the protection of the elderly?
>
> A. That's exactly what I'm saying.

(Helen MacMurray, Tr. 228, J.A. 478a).

Is "helpful" to become the litmus test for determining the constitutionality of laws that abridge speech? If so, a curfew prohibiting anyone from being on the street from 4:00 p.m. to 9:00 a.m., which Ms. MacMurray also felt would be "helpful," would be constitutional. (Helen MacMurray, Tr. 228-229, J.A. 479a). Ms. MacMurray's testimony

undoubtedly was constrained by the fact that the Ordinance has no mechanism to verify the information an applicant presents to obtain a permit. (Helen MacMurray, Tr. 228, J.A. 478a). Her testimony also was limited by the fact that there are no statistics to support her opinion about the effect of registration on the investigation of consumer or elderly fraud. (Helen MacMurray, Tr. 240, J.A. 488a). Further, the Village ignores the study Ms. MacMurray produced for this case, which indicated only two incidents of door-to-door problems in a four-county area surrounding Stratton over a two-year period. One involved no loss of money, the other dealt with cancellation rights for cable TV. (Defendants' Trial Exhibit 40, Statistical study prepared for Ohio Assistant Attorney General Helen MacMurray dated July 14, 1999, Tr. 86, Lodging 296a).

In its amicus brief, the State of Ohio interjects concerns of door-to-door violent crime. This interest was never asserted by Stratton. Ohio's own Assistant Attorney General MacMurray provided no testimony, statistics, or evidence that the permit scheme would deter violent crime. Rather than address why one who would commit a crime at a residence would be deterred by a permit scheme, Ohio references cases establishing the irrelevancy of a permit scheme to address crime. *See, e.g., State v. Manis*, No. CA99-09-085, 2000 WL 1050971 (Ohio Ct. App. July 24, 2000) (perpetrators burglarized residence after calling to make sure no one was home); *State v. Huda*, No. 66268, 1994 WL 530866 (Ohio Ct. App. Sept. 29, 1994) (perpetrator not involved in door-to-door canvassing or soliciting); *State v. Steffen*, 509 N.E.2d 383 (Ohio 1987) (perpetrator, who would have qualified for permit under Stratton-type scheme, murders only person who would have seen permit; even in absence of permit scheme, perpetrator was apprehended next day). Ohio also references an article that makes Jehovah's Witnesses' point — Stratton should enact a

properly tailored ordinance to regulate commercial solicitation: "When someone shows up at the door asking for money . . . people should call [sic] police, who have a list of registered groups allowed to solicit money." Kristi E. Swartz, *Fake Jehovah's Witnesses Steal Woman's $600*, Herald Sun, Jan. 5, 1999, at C1.

Stratton fails to explain the necessity of regulating access to private property. It cites no authority supporting its contention that standards applicable to governmental regulation of access to its own property gives it license to regulate access to its citizens' property. In addition, a time, place, and manner analysis is not applicable to a prior restraint scheme:

> [A] state may by general and non-discriminatory legislation regulate the times, the places, and the manner of soliciting upon its streets. . . . The appellants are right in their insistence that the Act in question is not such a regulation. If a certificate is procured, solicitation is permitted without restraint but, in the absence of a certificate, solicitation is altogether prohibited.

Cantwell v. Connecticut, 310 U.S. 296, 304 (1940).

This Court should not sanction Stratton's attempt to place a burden on receptive residents' access to information by licensing pure speech. There may come a day when a municipality must regulate pure speech and press delivered at residents' doors in furtherance of its compelling interests. This is not such a day nor such a case.

CONCLUSION

Stratton's city fathers posit a chilling version of American life — the press unable to disseminate literature without governmental permission; residents deprived of the opportunity to decide for themselves what message to hear without government pre-approval or knowledge; police authorized to check "the papers" of those desiring to engage in the free communication of ideas; and citizens deprived of their right to engage in anonymous door-to-door political discourse. Mayor Abdalla will then be able to enforce and guarantee his claim that people move to Stratton because they know they will not be bothered by Jehovah's Witnesses. By whom will the residents not be bothered tomorrow?

Jehovah's Witnesses respectfully request that this Court hold Stratton's Ordinance facially unconstitutional and reverse the decision of the Sixth Circuit Court of Appeals.

Respectfully submitted,

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No. 00-1737

IN THE
Supreme Court of the United States

WATCHTOWER BIBLE, ETC.

Petitioners,

v.

STRATTON, OHIO ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE ELECTRONIC PRIVACY INFORMATION CENTER, AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF OHIO AND 14 LEGAL SCHOLARS IN SUPPORT OF WATCHTOWER BIBLE, ETC, Petitioners

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No. 00-1737

WATCHTOWER BIBLE, ETC.

Petitioners,

v.

STRATTON, OH, ET AL.

Respondents.

MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Pursuant to Rule 37.3(b) of the Rules of the Supreme Court of the United States, amici hereby request leave to file the accompanying amicus curiae brief. Such brief is submitted in support of a partial reversal of the Sixth Circuit opinion.

Petitioner Watchtower Bible has consented to the filing of this brief. Respondent Stratton, Ohio has not consented.

As set forth in the accompanying brief, the Electronic Privacy Information Center ("EPIC") is a public interest research center in Washington, D.C. that was established to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values. The American Civil Liberties Union

("ACLU") is a nationwide, nonprofit, nonpartisan organization that has defended the First Amendment rights of numerous controversial speakers, including the Jehovah's Witnesses, since the ACLU's founding in 1920. The ACLU of Ohio is one of the statewide affiliates. The interest of the amici legal scholars is also set forth in the accompanying brief.

This case concerns a First Amendment freedom of speech claim brought by Watchtower Bible against the Village of Stratton, Ohio, alleging that the Village's ordinance requiring registration and identification prior to and during door-to-door petitioning violates the right of anonymity affirmed by the Court in cases such as *McIntyre v. Ohio Elections Commission*. 514 U.S. 334 (1995).

Amici have long held anonymity to be a core value protected by the First Amendment, essential to personal privacy, political liberty and intellectual freedom, because it protects those with unpopular ideas from retaliation and suppression. The Sixth Circuit's determination that the right to remain anonymous does not include the right to remain anonymous while going door-to-door to engage in political or religious speech is inconsistent with the existence of this right. Accordingly, amici respectfully request leave to file the accompanying amicus curiae brief.

Dated: November 28, 2001

Respectfully submitted,

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INTEREST OF THE AMICI CURIAE[1]

All *amici curiae* represented in this brief have acquired considerable practical experience addressing constitutional issues. The ruling of the court of appeals at issue here threatens the First Amendment rights of anonymity and freedom of association that these *amici* strive to protect. It also conflicts with the Court's decisions in *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), and *NAACP v. Alabama*, 357 U.S. 449 (1958), which together provide for a right of anonymity in speech and association.

Public Interest *Amici*

Amicus the Electronic Privacy Information Center ("EPIC") is a public interest research center in Washington, D.C. that was established to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and other constitutional values.

Amicus the American Civil Liberties Union ("ACLU") is a nationwide, nonprofit, nonpartisan organization with approximately 300,000 members dedicated to protecting the principles of liberty and equality embodied in the Constitution and our nation's civil rights law. Since its founding in 1920, the ACLU has appeared before the Court in numerous free speech cases, including *McIntyre v. Ohio*, where the Court once again upheld the right to engage in anonymous speech under the First Amendment. The

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[1] In accordance with Rule 37.6 it is stated that no monetary contributions were made for the preparation or submission of this brief.

American Civil Liberties Union of Ohio is a statewide affiliate of the national organization.

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SUMMARY OF THE ARGUMENT

Anonymity is a core First Amendment value that enables the expression of political ideas, participation in the political process, membership in political associations, and the practice of religious belief without fear of government intimidation or public retaliation. The Court has recognized the significant role that anonymity plays in the publication of unpopular ideas. It has also recognized that the right to withhold one's affiliation with an unpopular political association is a critical element of free association.

As such, any government action that infringes upon this right must be subjected to strict scrutiny. The Stratton ordinance, which requires those going door-to-door to register with the Village and to identify themselves prior to and during petitioning, forces Petitioners to sacrifice their anonymity and chills activity protected by the First Amendment.

Petitioners seek the opportunity to go door-to-door in accordance with their religious belief to discuss matters of religious concern without fear of government intimidation or public retaliation. Petitioners do not engage in commercial solicitation or in any other activity that could reasonably subject them to claims of fraud or libel. Moreover, Petitioners remain subject to trespass laws, as does any person who approaches the home of another. A local ordinance that compels disclosure of identity in these circumstances is subject to strict scrutiny even though it may appear content-neutral. Such an ordinance impermissibly burdens protected activity.

To uphold the registration requirement for people who engage in door-to-door solicitation for purely religious purposes, as required by their faith, would chill protected religious activity and violate the right of anonymity that the Court has repeatedly safeguarded.

ARGUMENT

I. The Sixth Circuit's Determination that the Challenged Restriction on Anonymous Petitioning is Not Subject to Strict Scrutiny is Erroneous

In order to engage in any door-to-door service in the Village of Stratton, whether it is solicitation, commercial canvassing, ministry, or campaigning, an individual is required to obtain a "Solicitation Permit" from the Mayor's office. *See* Ordinance § 116.03(a). In order to obtain the required permit, individuals must identify themselves and the reason for their petitioning, which includes identification with an organization (for example, to note one's participation in "the Jehovah's Witness ministry"). *See* Ordinance § 116.03(b)(1)-(5); *see also* Petition for a Writ of Certiorari at 4, *Watchtower Bible and Tract Society of New York, et al. v. Village of Stratton, Ohio* (No. 00-1737) (2001). The registration forms required by the Village are public records as defined by Ohio law. *See* OHIO REV. CODE ANN. § 149.43(A)(1) (West 2001). In addition, the ordinance requires that Petitioners produce their permit upon the demand of individual homeowners. Failure to do so can lead to revocation of the license and disqualification from being granted a future license; in addition, failure to obtain a permit constitutes a misdemeanor. *See* Ordinance § 116.06,.99.

The Sixth Circuit analyzed the First Amendment challenge to these mandatory disclosure requirements under the intermediate level of judicial scrutiny applicable to time, place and manner regulations. *See Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240

F.3d 553, 562 (6th Cir. 2001). The court justified this level of scrutiny on the following grounds: (1) that the Supreme Court has never held that hybrid rights claims are subject to strict scrutiny; and (2) that the canvassers have little remaining First Amendment right to anonymity. *See id.* This approach mischaracterizes the right at issue, underestimates the burden imposed by the Stratton ordinance, and mischaracterizes the Court's relevant precedents.

Whether circulating a petition, distributing a handbill, or canvassing door to door, a speaker has the right to remain anonymous to prevent private or government retaliation. Violations of that right represent a form of compelled speech that triggers strict scrutiny. *See Buckley v. ACLF*, 525 U.S. 182, 199 (1999); *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995). Additionally, the Stratton ordinance is subject to strict scrutiny because it infringes upon the right of anonymous association that the Court has long protected, *see NAACP v. Alabama*, 357 U.S. 449, 461 (1958), but which the Sixth Circuit ignored entirely. Finally, unlike the Sixth Circuit, the Court has held that ordinances infringing upon multiple Constitutional rights ("hybrid rights" cases) are subject to strict scrutiny. *See Employment Division v. Smith*, 494 U.S. 872, 881 (1990).

Under strict scrutiny, a restriction on First Amendment rights will be upheld only if it is narrowly tailored to serve an overriding state interest. See *McIntyre*, 514 U.S. at 348. The Village of Stratton's asserted interests in passing the ordinance were to "protect residents from fraud and undue annoyance in their homes." *See Watchtower Bible*, 240 F.3d at 566. As discussed, *infra* Part III, the Stratton ordinance is not narrowly tailored to these government

interests (even assuming the interests are compelling); therefore, the Stratton ordinance must be overturned as a violation of the First Amendment.

A. Infringement on Anonymous Petitioning is Subject to Strict Scrutiny

The Sixth Circuit analyzed the Stratton ordinance under intermediate scrutiny because the court held that the ordinance did not implicate the First Amendment right to distribute a political message anonymously. Adopting a waiver theory that has no support in the Court's case law, the Sixth Circuit held that "individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities—their physical identities—to the residents they canvass." *Watchtower Bible*, 240 F.3d at 563. Based on that assumption, the Sixth Circuit attached no constitutional significance to the fact that the ordinance "requires political canvassers to reveal the remainder of their identities, i.e. their names." That approach is irreconcilable with both *Talley v. California* and *McIntyre*. *See McIntyre,* 514 U.S. at 334, *Talley v. California,* 362 U.S. 60 (1960). Each case involved an anonymous leafleter, like petitioners here. In neither case, however, did the Court even suggest that the leafleter forfeited her anonymity by handing out the leaflets in person. To the contrary, the Court recognized that the compelled disclosure of one's name represents a unique abridgement of the right to anonymous speech. *See McIntyre,* 514 U.S. at 334, *Talley,* 362 U.S. at 65.

This point was made explicitly in *Buckley v. American Constitutional Law Foundation,* 525 U.S. 182 (1999), where the Court unanimously overturned the portion of a Colorado statute that required people handing out petitions wear nametags. *Id* at 199, 209, 206, 217. As the Court explained:

> [T]he name badge requirement 'forces circulators to reveal their identities at the same time they deliver their political message,' it operates when reaction to the circulator's message is immediate and 'may be the most intense, emotional, and unreasoned.' ... The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is the greatest.

Id at 182 (citations omitted).

The Court thus unanimously held that a government action that infringes upon the right to anonymity at the moment that a message is delivered, despite the fact that the speaker is face to face with those to whom the message is being delivered, must be analyzed under the strictest scrutiny. That is precisely the situation here. The Stratton ordinance forces the canvassers to reveal their personal identity at the moment when they are face to face with the person to whom they are delivering an unpopular message, thus exposing them to the potential retaliation and social ostracism against which the right of anonymity is designed to protect.

Moreover, as the Court noted in *McIntyre*, mandatory disclosure is a form of compelled speech and subject to strict scrutiny on those grounds as well. The reason for this is clear. "[T]he identity of the speaker is no different from other components of the document's content that the author is free to include or exclude." *McIntyre*, 514 U.S. at 348. Thus compelled speech requirements, like content-based restrictions on speech, trigger strict scrutiny under this Court's well-established precedents. *See Wooley v. Maynard*, 430 U.S. 705 (1977).

B. Requiring Disclosure of Identity with a Controversial Organization is Subject to Strict Scrutiny

Additionally, state action that infringes upon the First Amendment freedom of association is subject to the most exacting scrutiny, as more fully explained below. *See NAACP*, 357 U.S. at 460-61. Strict scrutiny must be applied even where the ordinance only indirectly implicates freedom of association. *See id.* at 461. The Stratton ordinance requires Petitioners to surrender their anonymity by revealing not only their identity but also their association with a religious group.

The Sixth Circuit utterly disregarded the effect that the Stratton ordinance had upon Petitioners' freedom of association, and thus erroneously analyzed the ordinance under intermediate scrutiny.

C. Infringement upon Religious and Charitable Activity, when Combined with Infringement upon

other Constitutional Rights has been Subject to Strict Scrutiny by the Court

Finally, the Sixth Circuit analyzed the Stratton provision under intermediate scrutiny on the assumption that the "hybrid" infringement imposed by this regulation did not justify strict scrutiny. However, in *Employment Division*, the Court specifically limited its holding that a claim for religious exemption from neutral and generally applicable laws doesn't trigger strict scrutiny by noting that prior cases applying strict scrutiny had involved "hybrid" claims of precisely the sort raised here. 494 U.S. at 881.

In addition to a myriad of cases in which the Court determined unconstitutional a state law infringing upon both the freedom of religion and the freedom of speech, *see, e.g.*, *Cantwell v. Connecticut*, 310 U.S. 296, 304-07 (1940); *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), the Court has also expressly reserved the possibility of a hybrid case in which the validity of the religious challenge was strengthened by the laws' corresponding infringement upon freedom of association. *See Smith*, 494 U.S. at 881 ("And it is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns.").

Because the Stratton ordinance implicates not only freedom of religion, but also freedom of speech and freedom of association, it must be subject to a more exacting level of judicial scrutiny, and because the ordinance is not narrowly tailored to the government's asserted interests in protecting its citizens from fraud and annoyance in their homes, *see*

infra Part III, it cannot survive the strict scrutiny that is required.

II. Anonymity is a Core First Amendment Value that Enables the Expression of Ideas and Freedom of Association Without Government Intimidation or Fear of Retaliation

A. The First Amendment Protects Anonymous Speech

1. The Framers Intended to Safeguard the Right to Distribute Literature Anonymously

The First Amendment states, "the government ... shall make no law ... abridging the freedom of speech, or of the press." U.S. CONST., AMDT 1. The Court has looked to tradition as one of its tools for interpreting the meaning and intention behind these rights, because traditional use "'implies the favorable judgment of experience.'" *Globe Newspaper Co. v. Superior Court,* 457 U.S. 596, 605 (1982), quoting *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 589 (1980) (Brennan, J., concurring). "There is little doubt that the Framers engaged in anonymous political writing." *McIntyre*, 514 U.S. at 360 (Thomas, J., concurring). The most famous example of anonymous political writing, in fact, occurred during the ratification of the Constitution, when the Federalist Papers were published under the pseudonym Publius. *See id.* Moreover, that tradition was nonpartisan. In response to the refusal by several Federalist papers to publish anonymous works, outraged Anti-

Federalists declared that this action would "reverse the important doctrine of the freedom of the press." *Id.* at 365.

This tradition of anonymous literature stretches well beyond political writing.

> "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." Great works of literature have frequently been produced by authors writing under assumed names. Despite readers' curiosity and the public's interest in identifying the creator of a work of art, an author generally is free to decide whether or not to disclose his or her true identity. The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible. Whatever the motivation may be, at least in the field of literary endeavor, the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

Id. at 341-42 (citations omitted). This historical evidence clearly reveals a "respected tradition of anonymity in the advocacy of political causes." *Id.* at 340. "The recognition that anonymity shelters constitutionally-protected decisions about speech, belief, and political and intellectual association—decisions that otherwise might be chilled by unpopularity or simple difference—is part of our constitutional tradition." Julie E. Cohen, *Examined Lives: Informational Privacy and the Subject as Object*, 52 STANFORD L. REV. 1373, 1425 (2000).

Prior decisions by the Court have strongly affirmed that anonymity is a core First Amendment value. In *Talley*, the Court noted that anonymous publications "have played an important role in the progress of mankind." 362 U.S. at 64.

> There can be no doubt that [] an identification requirement would tend to restrict the freedom to distribute information and thereby freedom of expression. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulating, the publication would be of little value."

Id. While invalidating a ban on anonymous pamphleteering in *McIntyre*, the Court noted that: "[u]nder our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent." 514 U.S. at 357. Anonymous speech "exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals

from retaliation—and their ideas from suppression—at the hand of an intolerant society." *Id.* at 357.

The Stratton ordinance threatens this historically protected right of anonymity by forcing those who voice their message by going door-to-door to surrender their anonymity. The ordinance, §116.03, requires that Petitioners obtain a "Solicitation Permit" before they are authorized to petition door to door in the Village of Stratton. The registration forms necessary to obtain such a permit require that the individual disclose her name, address, and affiliation. These registration forms ultimately are public records.[2] In addition, §116.04 requires that Petitioners produce their permit upon the demand of individual homeowners. Failure to comply with either requirement constitutes a misdemeanor. Ordinance §116.99.

The Jehovah's Witnesses have historically relied upon the Court to safeguard their rights to free speech, free press, freedom of religion, and freedom of association from state or local efforts to prohibit constitutionally protected activity.[3] Central to the Jehovah's Witness religion is the belief that members must perform a public ministry by going door to

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[2] According to the Ohio Revised Code § 149.43(A)(1), a "public record" means any record that is kept by any public office. The police department is a public office as defined by § 149.011(A). A registration application for a Solicitation Permit is a document that identifies police procedures or operations, namely the monitoring of those who want to engage in any door-to-door activity, and therefore are public records as defined by § 149.011(G). *See* OHIO REV. CODE ANN. § 149.43(A)(1),(G) (West 2001).

[3] Between 1938 and 1945, the Jehovah's Witnesses participated in 45 cases before the Court, winning 36 of them. *See* HENRY J. ABRAHAM, FREEDOM AND THE COURT 236 (4th ed., Oxford Univ. Press 1982).

door to voice their faith and offer people religious instruction. The Stratton ordinance forces Petitioners to either sacrifice their constitutional right to anonymity or be subjected to criminal sanctions. Such a choice places Petitioners between Scylla and Charybdis, a dilemma the Court has long refused to sanction. See *Wooley*, 430 U.S. at 710. The Court must therefore determine that the Stratton ordinance unconstitutionally infringes upon Petitioner's First Amendment right to anonymity.

2. Forcing Speakers to Reveal their Identity Violates Freedom of Speech

Anonymity is essential to the freedom to participate in dissident groups and to express unpopular views. *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 91 (1982); *Gilmore v. City of Montgomery*, 417 U.S. 556, 575 (1974); *NAACP v. Button*, 371 U.S. 415, 431 (1963); *Talley v. California*, 362 U.S. 60, 65 (1960); *NAACP v. Alabama*, 357 U.S. at 462. Identification requirements "extend beyond restrictions on time and place—they chill discussion itself." *Hynes v. Mayor of Oradell*, 425 U.S. 610, 628 (1976) (Brennan, J., concurring in part). The importance of anonymity lies in the speakers' ability to speak her message without fear of retaliation for voicing an unpopular viewpoint. The fear of reprisal an identification requirement would engender "might deter perfectly peaceful discussions of public matters of importance." *Talley*, 362 U.S. at 64. Therefore, "[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all." *Id.*

Although anonymity has historically been framed as important to political discussions, its significance and scope is far broader. Anonymity is a necessary component in people's ability to form ideas outside the watchful eye of their neighbors, as well as the government.

Anonymity is central to the flourishing of a pluralistic society, because it permits engagement in ideas and beliefs outside of the mainstream without fear of retribution. For example, in *Buckley v. ACLF*, the Court held that the statutory requirement that those circulating political petitions wear identification badges "inhibits participation in the petitioning process" because it limits the number of people willing to petition for organizations, and the degree to which they were willing to do so. *See Buckley v. ACLF*, 525 U.S. 182, 197-98 (1999). In particular, individuals are often reluctant to be identified by name "to face the recrimination and retaliation that bearers of petitions on 'volatile' issues sometimes encounter." *Id.* at 198.

The Jehovah's Witnesses go door to door to advocate their religion, though many may disagree with their beliefs. *See Cantwell*, 310 U.S. at 309-10 (1940). Forcing Petitioners to reveal their identity may well deter members of the religion from exercising their First Amendment rights out of fear that they will be forced to endure the recrimination that has historically plagued the delivery of their message. Petitioning door-to-door without obtaining a permit subjects the individual to criminal sanctions for failure to abide by the requirements of Chapter 116. Many Jehovah's Witnesses may choose to remain silent rather than to communicate a constitutionally protected message in a manner that might be construed unlawful. This chilling effect is heightened by the

threat that the ordinance might be discriminatorily enforced. *See Reno v. ACLU,* 521 U.S. 844, 872 (1997); *see also Watchtower Bible*, 240 F.3d at 561 (summarizing evidence presented by the petitioner in support of their argument that the ordinance was enacted to restrict Jehovah's Witnesses, and was being discriminatorily enforced).

B. The First Amendment Protects Privacy of Association

The "close nexus" between the First Amendment freedoms of speech and assembly assures a freedom to engage in association for the advancement of beliefs and ideas. *See NAACP*, 357 U.S. 449, 460 (1958). Effective advocacy of both public and private viewpoints—central to the First Amendment—is "undeniably enhanced by group association." *Id.* Freedom of association is a fundamental right protected by the Due Process Clause of the Fourteenth Amendment. *Id.*, citing *De Jonge v. Oregon*, 299 U.S. 353, 364; *Thomas v. Collins*, 323 U.S. 516, 530 (1992). The freedom of association encompasses the right to privacy of that association, and therefore prevents compelled disclosure of membership in an organization. *NAACP*, 357 U.S. at 459. Such a right is necessary to the freedom of expression, which depends upon the unrestricted flow of ideas, because the "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.* at 462.

Because "anonymity is a shield from the tyranny of the majority," anonymity in one's association is as important

as anonymity in one's speech. *McIntyre*, 514 U.S. at 357. Forced disclosure of one's association with a group chills the freedom of assembly because of the fear of the consequences of exposure of one's association with an unpopular group; therefore, the freedom to associate depends upon privacy in one's associations. *See NAACP*, 357 U.S. at 462. Privacy of association is especially vital where revelation of membership has exposed members to physical, social, or economic threats or hostility. *See id*; *see also Shelton v. Tucker*, 364 U.S. 479 (1960). In order to protect this privacy, the Court has held that compelled disclosure of one's membership in an organization engaged in advocacy of a particular belief interferes with the freedom of assembly. *See NAACP,* 357 U.S. at 462.

In *NAACP*, the petitioner NAACP refused to comply with a court order mandating disclosure of the organization's member lists on the grounds that to do so would violate the First Amendment freedom of association. The Court held that the right to freedom of association encompasses both the right of an organization to keep private its list of members, as well as the right of the members to withhold their connection with the organization. *Id.* at 459. Such a right is necessary to ensure the free flow of ideas—"whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters"—because the "inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.* at 462. The Court said:

> We think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective efforts to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and the consequences of this exposure.

Id. at 462-63.

Just as compelled disclosure of its membership lists chilled freedom of association in *NAACP*, so does Stratton's ordinance unconstitutionally inhibit Petitioner's freedom of association.

The Jehovah's Witnesses have a well documented history of state and social discrimination, which is best illustrated by the many cases brought before the Court and in the language of the Stratton ordinance. *See, e.g., Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953) (holding unconstitutional as applied a municipal ordinance that was interpreted to prohibit preaching in a public park by a Jehovah's Witness but to permit preaching during the course of a Catholic mass or Protestant church service); *Niemotko v. Maryland*, 340 U.S. 268, 272-73 (1951) (holding unconstitutional as applied a city ordinance that was used to discriminate against the public preaching of Jehovah's Witnesses); *Jones v. Opelika*, 316 U.S. 584, 617 (1942) ("We need not shut our eyes to the possibility that use may again be made of such taxes, either by discrimination in enforcement or otherwise, to suppress the unpalatable views of militant minorities such as Jehovah's Witnesses.") (Murphy, J., dissenting); *Cantwell*, 310 U.S. at 309-10; *McConkey v. Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682 (1942); *see also* Petition for a Writ of Certiorari at 3, *Watchtower Bible and Tract Society of New York* (No. 00-1737) (2001) (documenting evidence of blatant anti-Jehovah's Witness sentiment underlying the enactment of the Stratton ordinance).

As the Court explained in *Buckley v. Valeo*, 424 U.S. 1, 71 (1976), where the threat posed to First Amendment freedoms of speech and association by government disclosure requirements are "so serious and the state interest furthered by disclosure so insubstantial that the Act's [disclosure] requirements cannot be constitutionally applied." *Id.*

The right of the members of an association to withhold their connection with the association is properly assertable by the association itself, because "[t]o require that it be claimed by the members themselves would result in nullification of the right at the very moment of assertion." *Id.* at 460. Not only are the association and its members "in every practical sense identical," compelling disclosure of member lists directly effects the association because it diminishes financial support and membership." *Id.* at 459-60. Therefore, the Petitioner may properly assert a freedom of association claim for those members of its religion that practice door-to-door petitioning in Stratton, Ohio.

III. The Ordinance Fails Strict Scrutiny Because it is Not Narrowly Tailored to Protect Stratton's Interests in Preventing Fraud and Annoyance

A. The Interest in Fraud Prevention does Not Justify a Flat Ban on Anonymous Petitioning

A state's interest in preventing fraud—although valid—is insufficient to justify a flat ban on anonymous speech, where the state has less intrusive means of accomplishing the same interest. In *McIntyre*, Ohio's "interest in preventing fraudulent and libelous statements and its interest in providing the electorate with relevant information" was insufficiently compelling to justify a ban on anonymous speech. 514 U.S. at 349. Similarly, in *Buckley v. ACLF*, the Court held that the restrictions on anonymous petitioning significantly inhibited First Amendment freedoms, and were not warranted by the Colorado's interests in, *inter alia*, fraud detection. 525 U.S. at 192.

The Sixth Circuit upheld the Stratton ordinance, asserting that the ban on anonymous petitioning was necessary to prevent "criminals posing as canvassers." *Watchtower Bible*, 240 F.3d at 566-67. In *Talley*, the Court struck down a California statute prohibiting the distribution of anonymous handbills. 362 U.S at 60. Although the State claimed the regulation was necessary "to identify those responsible for fraud, false advertising and libel," the ordinance was not limited to prevention of such evils, but instead prohibited all anonymous pamphleteering—even speech that was not fraudulent or libelous. *Talley*, 362 U.S. at 64. A state cannot assume that anonymity is a shield for fraud

or criminal activity, this Court cautioned, because "[u]nder our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent." *McIntyre*, 514 U.S. at 357. California had no evidence that anonymous pamphleteering was the root of rampant fraudulent or libelous activity. *See Talley*, 362 U.S. at 64. Just as the state's interest in fraud and libel prevention was insufficient to justify the regulation in *Talley*, Stratton's interest in fraud prevention is insufficient to justify the Village's ban on anonymous petitioning. A state can regulate fraud directly, *see* Part IIIB, "But [a state] cannot seek to punish fraud indirectly by indiscriminately outlawing a category of speech." *McIntyre*, 514 U.S. at 357.

The requirement that potential canvassers must register with the Office of the Mayor, by completing a form that requires, *inter alia*, the canvasser's name and home address, as well as a description of the organization for which the individual is canvassing, is just as overbroad as the requirement that a canvasser reveal her identity to any homeowner who asks. In purpose and effect it is easily distinguishable from the "affidavit" requirement implicitly upheld in *Buckley v. ACLF*.[4]

Specifically, the Court has repeatedly acknowledged the government's strong interest in ensuring that the election process is free from corruption and fraud. *See Buckley v. Valeo*, 424 U.S. at 66-67 (1976). The challenged regulation in this case plainly has no relation to the electoral process,

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[4] The statute at issue in *ACLF* required those gathering signatures for election petitions to attest to the accuracy of the signatures they gathered by adding their own names and address. 525 U.S. at 198. The Tenth Circuit decision upholding that requirement was left undisturbed by the Court. *Id.*

and has not been shown to be narrowly tailored to the state's asserted interest. To the contrary, the Stratton ordinance requires a Solicitation Permit for all forms of door-to-door canvassing, including pure political and religious expression of the sort involved here. In doing so, the ordinance restricts not only commercial solicitation—a possible avenue for fraudulent communications—but also a substantial amount of speech unrelated to the prevention of fraud. The ordinance, therefore, is not narrowly tailored to promote the state's legitimate interest in protecting its citizens from fraudulent communications.

B. The Village Retains the Ability to Prosecute where a Homeowner Objects to the Solicitation Without Violating Constitutionally Protected Activity

It is important to note that the Petitioner asserts no right to absolute immunity from state investigation, and no right to disregard state laws. *See NAACP*, 357 U.S. at 463. The Village of Stratton seeks to protect its residents "from fraud and undue annoyance in their homes." *Watchtower Bible*, 240 F.3d at 566. The Constitutional flaw in the ordinance lies not in its ends but in its means. *See supra*, Part IIIA. The Village has other, less intrusive means of protecting its citizens. Indeed, the Court has frequently identified alternatives—short of outright of anonymous speech—by which a state can seek to limit fraud. *See McIntyre*, 514 U.S. at 350 n.12; *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 637-38 (1980).

The Sixth Circuit cited *Frisby v. Schultz* for the proposition that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free society." However, the Court has held that the dangers posed by intrusion into one's home "can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas." *See Martin v. Struthers*, 319 U.S. 141, 147 (1943).

The Village of Stratton has adequately served the privacy interests of its citizens by providing that any homeowner can file a No Solicitation form with the Mayor's office. *See Watchtower Bible*, 240 F.3d at 558. Petitioners are subject to common law trespass actions if they fail to honor the homeowner's stated wishes. In addition, the Village can pass laws prohibiting petitioning or solicitation under false pretenses or conveying fraudulent messages: "fraudulent misrepresentations can be prohibited and the penal laws used to punish such conduct directly." *Village of Schaumburg*, 444 U.S. at 637. "Where core First Amendment speech is at issue, the State can assess liability for specific instances of deliberate deception, but it cannot impose a prophylactic rule requiring disclosure even where misleading statements are not made." *Riley v. National Federation of the Blind*, 487 U.S. 781, 803 (1988). Because other laws do not infringe upon Petitioners' freedom of association or speech, and adequately serve to protect the State's interests, the Village retains its ability to protect its stated interests without

depriving Petitioners of the right to engage in constitutionally protected activity.

CONCLUSION

Petitioners seek the opportunity to go door-to-door in accordance with their religious belief to discuss matters of religious concern without fear of government intimidation or public retaliation. The right to do so is protected by the First Amendment. The contrary judgment of the Sixth Circuit should therefore be reversed for the reasons stated herein.

Dated: November 28, 2001

Respectfully submitted,

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IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., ET AL.,

Petitioners,

v.

VILLAGE OF STRATTON, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF AMICUS CURIAE OF REALCAMPAIGNREFORM.ORG, INC., FREE SPEECH DEFENSE AND EDUCATION FUND, INC., LINCOLN INSTITUTE FOR RESEARCH AND EDUCATION, CAPITOL HILL PRAYER ALERT FOUNDATION, U.S. JUSTICE FOUNDATION, GUN OWNERS OF AMERICA, INC., AND CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND IN SUPPORT OF PETITIONERS

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SOURCES OF OUR LIBERTIES (R. Perry, ed. 1972) 22

INTEREST OF AMICI CURIAE

The *amici curiae*, RealCampaignReform.org, Inc., Free Speech Defense and Education Fund, Inc., Lincoln Institute for Research and Education, Capitol Hill Prayer Alert Foundation, U.S. Justice Foundation, Gun Owners of America, Inc., and Conservative Legal Defense and Education Fund, are nonprofit educational organizations sharing a common interest in the proper construction of the Constitution and laws of the United States.[1] All of the *amici* were established for public education purposes related to participation in the public policy process, and are tax-exempt under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code.

For each of the *amici*, such purposes include programs to conduct research, and to inform and educate the public, on important issues of national concern, including questions related to the original intent of the Founders and the correct interpretation of the United States Constitution. The First Amendment issues presented in this case directly impact the right of individuals and organizations to express their views on educational, social and political topics and issues, as well as religious matters, and are of extreme interest and importance to these *amici*. In the past, most of the *amici* have conducted research on other issues involving constitutional interpretation and filed *amicus curiae* briefs in other federal litigation, including matters before this Court, involving constitutional issues.[2]

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[1] Pursuant to Supreme Court Rule 37.6, it is hereby certified that no counsel for a party authored this brief in whole or in part, and that no person or entity other than these *amici curiae* made a monetary contribution to the preparation or submission of this brief.

[2] *Amici* requested and received the written consents of the parties to the filing of this brief *amicus curiae*. Such written consents, in the form of letters from counsel of record for the parties, have been submitted for filing to the Clerk of Court.

SUMMARY OF ARGUMENT

The court of appeals majority decision below is in direct conflict with this Court's recent First Amendment anonymity decisions in McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995), and Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182 (1999), as well as in its seminal anonymity decision, Talley v. California, 362 U.S. 60 (1960). It also stands at odds with this Court's freedom of the press decisions in Near v. Minnesota, 283 U.S. 697 (1931), Lovell v. Griffin, 303 U.S. 444 (1938), Martin v. City of Struthers, 319 U.S. 141 (1943), and Miami Herald Publishing Co., Inc. v. Tornillo, 418 U.S. 241 (1974).

At issue in this case is a provision in the Village of Stratton, Ohio Ordinance No. 1998-5 that forces disclosure of the names and addresses of door-to-door canvassers, and of their affiliated organizations, to the village mayor in order to obtain a permit to promote or explain any religious, political, social or other "cause." Also at issue is a provision that, upon the request of any police officer or of a person canvassed, forces disclosure of the name of a canvasser who has obtained a door-to-door permit.

Astonishingly, a majority of the court of appeals below concluded that neither provision implicated this Court's First Amendment anonymity ruling in McIntyre, *supra*, for the sole reason that "individuals going door-to-door ... are not anonymous [because] they reveal ... their physical identities ... to the residents they canvass." Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d 553, 563 (6th Cir. 2001). Yet, in both McIntyre and in Buckley, this Court applied its First Amendment anonymity principle to cases in which persons were engaged in activity revealing their physical identities.

By sidestepping McIntyre and Buckley, the court of appeals majority subjected the Stratton ordinance to only "intermediate scrutiny," as if its provisions forcing disclosure of door-to-door canvassers were simple "time, place and manner" regulations. Had the court followed this Court's lead in applying the anonymity principle, it would have been required to subject the Stratton ordinance to "strict scrutiny."

Accordingly, the record below provides no basis for a finding that the forced disclosure provisions were compelled by any legitimate governmental interest. Although the Village of Stratton claimed that such disclosure was designed to protect its residents from fraud and false statements, neither the legislative history nor the text of the ordinance was so limited, as required by McIntyre and Talley.

And, although the Village of Stratton also claimed that such disclosure was necessary to protect residential privacy, the ordinance is not narrowly tailored to that end. Rather than providing straightforward protection for any resident who simply puts up a sign indicating that uninvited solicitors and canvassers are not welcome, the ordinance requires residents to register with the village mayor in order to make sure that they do not appear on an official list of residents "willing" to hear such uninvited guests. Such a convoluted scheme actually undermines the right of residents to exercise their First Amendment rights as provided in Martin v. City of Struthers, *supra*.

Finally, the Stratton ordinance is unconstitutional because it violates the principle of anonymity embedded in the freedom of the press. Because the ordinance requires a permit before a person may engage in door-to-door First Amendment activities, it operates as a prior restraint upon communicative activities, not as a content-neutral "time, place or manner" regulation

governing the orderly and peaceful use of public property. As a prior restraint on free speech, the ordinance forces disclosure of applicant communicators' identities and affiliations in the same way, and for the same purpose, as the hated English licensing acts, contrary to the prior restraint principle of the freedom of the press.

Additionally, the ordinance seizes editorial control from door-to-door canvassers, forcing them to disclose their names to police officers and residents upon request. As the freedom of the press protects newspapers and periodicals from having to disclose the names of their reporters in relation to a published story and the names of their editors in relation to an opinion piece, so that same freedom protects a door-to-door canvasser from disclosing his "name, address and serial number." In short, the Stratton ordinance crosses the barrier erected by the freedom of the press, in failing to guard the editorial function of the people against government intrusion.

Unless struck down, the Stratton ordinance will undermine the indispensable First Amendment principle of anonymity long recognized by this Court, and deeply rooted in the freedom of press.

ARGUMENT

INTRODUCTION

This case concerns the application of the First Amendment anonymity principle to an Ohio village's comprehensive ordinance providing for public registration, including the required disclosure of the names and addresses of both "canvassers" and private residents, as part of a scheme to control residential door-to-door communications "promoting ...

or explaining any cause," whether it be religious, educational, political, electoral, social, or otherwise.

At stake in this case is the principle of anonymity, recently affirmed by this Court in McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995) ("McIntyre") and Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182 (1999) ("Buckley"), as applied to an ordinance requiring a person to register, and disclose his name, address, and organizational affiliation, in order to obtain a permit to engage in "canvassing" from door-to-door, even where his purpose is merely to promote or explain a cause without any design to sell any product or service, or otherwise to solicit any funds. Also at stake is whether the principle of anonymity will tolerate an ordinance requiring a door-to-door canvasser to make known his name and organizational affiliation upon request of "any police officer or by any person solicited."

Resolution of these issues in this case also involves the constitutional right of a resident in a city, town or village to post a "No Solicitation" sign upon his or her private residence to protect the resident from unwanted solicitors, without having both to register with the village mayor and to post a "No Solicitation" sign that meets village standards, in order to avoid being placed on a list of residents "willing" to receive uninvited solicitors and canvassers at the door of their homes.

For over 60 years, this Court has viewed with suspicion any local ordinance requiring a permit before a person may communicate ideas within the city, having recognized that such ordinances "strike[] ... at the very foundation of the freedom of the press by subjecting it to license and censorship" (Lovell v. Griffin, 303 U.S. 444, 451 (1938)):

> The struggle for the freedom of the press was primarily directed against the power of the licensor.... [T]he liberty of the press became initially a right to publish "**without** a license what formerly could be published only **with** one." [T]his freedom from previous restraint upon publication ... was a leading purpose in the adoption of [the freedom of the press] provision. [Id., 303 U.S. at 451-52 (emphasis original, notes omitted).]

Likewise, for nearly 60 years, this Court has looked askance at any local ordinance that substitutes the judgment of the government for that of the individual householder, having recognized that the right of the freedom of speech and the press "necessarily protects the right to receive" the communication of another unfettered by any government intrusion:

> Freedom to distribute information to **every citizen wherever he desires to receive it** is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be **fully** preserved. The dangers of distribution can be so easily controlled by traditional legal methods, **leaving each householder the full right to decide whether he will receive strangers as visitors**, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas. [Martin v. City of Struthers, 319 U.S. 141, 146-47 (1943) (emphasis added).]

By intruding upon the right of a canvasser to go door-to-door unhindered by the prior restraint of a city permit, and by precluding the right of a householder to receive or reject that canvasser uninhibited by the prior restraint of a city registration requirement, the Village of Stratton, Ohio ("Stratton") has trampled not only upon the constitutionally-protected right of

the Jehovah's Witnesses to shield their identity from the watchful eye, and coercive power, of village officials as they go door-to-door promoting and explaining their religious cause, but also upon the constitutionally-protected right of the village residents to decide for themselves whether to listen to those who wish to speak, associate with those whom they want to visit, and read whatever they choose from among the publications that may be offered to them, without the mayor's prior approval.

I. THE STRATTON VILLAGE ORDINANCE VIOLATES THIS COURT'S RULINGS PROTECTING ANONYMITY UNDER THE FIRST AMENDMENT.

Within the past decade, this Court has reaffirmed the First Amendment principle of anonymity in two significant cases. In both cases, the Court found the principle of anonymity protective of "political speech" occurring in places frequented by the public. McIntyre, *supra*, 514 U.S. at 343; Buckley, *supra*, 525 U.S. at 198-99. The McIntyre court found an Ohio law, requiring the name and address to be printed on printed "campaign literature," to have violated the ruling in Talley v. California, 362 U.S. 60 (1960), which had previously "embraced a respected tradition of anonymity in the advocacy of political causes," as protected by the First Amendment:

> The Ohio statute [like the ordinance in Talley] contains no language limiting its application to fraudulent, false or libelous statements; to the extent, therefore, that Ohio seeks to justify [its statute] as a means to prevent dissemination of untruths, its defense must fail for the same reason given in Talley. [McIntyre, *supra*, 514 U.S. at 344.]

In Buckley, this Court unanimously ruled that a Colorado law requiring a name identification badge to be worn by initiative petition circulators violated the McIntyre rule. Writing for the court, Justice Ginsberg concluded that Colorado's interest in protecting the "integrity" of the electoral process did not outweigh the constitutional right prohibiting "compelled disclosure" of the circulators' names. Buckley, *supra*, 525 U.S. at 201-04.

In this case, Stratton claims that its interest in protecting its residents from "fraudulent solicitation" and intrusions upon residential "privacy" justifies the compelled disclosure of the names and addresses of door-to-door canvassers who are simply "promoting or explaining a cause," both prior to engaging in such canvassing activity and during such activity, if requested either by a "police officer" or by a person canvassed. *See* Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d 553, 561, 563, 566 (6th Cir. 2001) ("Watchtower v. Stratton").

As was true of the Ohio statute in McIntyre, and the city ordinance in Talley, the Stratton ordinance is not limited to "fraudulent, false, ... libelous" or otherwise impermissible representations or communications, but extends to any and all communications "promoting ... or explaining any ... cause." Watchtower v. Stratton, *supra,* 240 F.3d at 564. And, as true of the Colorado forced disclosure law struck down in Buckley, found to be unconstitutional because it was unnecessary to protect the integrity of the electoral process, the Stratton ordinance likewise is unconstitutional, not only because it is unnecessary to protect the legitimate interest of residential privacy, but also because it actually interferes with private residents' First Amendment rights.

A. Neither the Legislative History nor the Text of the Stratton Ordinance is Limited to Stopping False or Fraudulent Purveyors.

Any statute or ordinance requiring disclosure of the name and address of a person engaged in communicative activity cannot be justified by a "generalized" claim that the statute or ordinance is designed to prevent fraudulent or false statements. McIntyre, *supra*, 514 U.S. at 344, n. 7. As Justice Harlan wrote in his concurring opinion in Talley:

> [I]t will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character. In the absence of a more substantial showing as to Los Angeles' actual experience with the distribution of obnoxious handbills, such a generality is for me too remote to furnish a constitutionally acceptable justification .... [Talley v. California, *supra*, 362 U.S. at 66-67 (Harlan, J., concurring).]

Thus, this Court insisted in McIntyre that, to be justified as a measure against fraud or false statements, a statute or ordinance requiring disclosure of a communicator's name and address must be "limited in its application to those evils" evidenced either "in the text or legislative history." McIntyre, *supra*, 514 U.S. at 343.

Neither of the courts below followed this rule. The district court failed entirely, neither addressing the anonymity issue nor citing the McIntyre rule. *See* Watchtower Bible and Tract Society v. Village of Stratton, 61 F. Supp. 2d 734 (S.D. Ohio 1999). The court of appeals majority attempted to sidestep McIntyre completely, asserting that the "anonymity" principle did not apply because "individuals going door-to-door ... are

not anonymous by virtue of the fact that they reveal a portion of their identities — their physical identities — to the residents they canvass." Watchtower v. Stratton, *supra*, 240 F.3d at 563. But that approach ignores the very essence of the anonymity principle espoused by this Court in McIntyre and Buckley. As is clearly evident in McIntyre, Ms. McIntyre revealed her "physical identity" as she "distributed leaflets to persons attending a public meeting at the Blendon Middle School in Westerville, Ohio." McIntyre, *supra*, 514 U.S. at 337. Likewise, the paid circulators in Buckley revealed their physical identities to persons whose signatures they solicited. Buckley, *supra*, 525 U.S. at 197-98. There is no hint in either case that such revelations forfeited the constitutional right to be free from a law forcing the disclosure of one's name. To claim, as the court of appeals majority did, that the Jehovah's Witnesses brought themselves out from underneath the protection of the anonymity principle by "going door-to-door," thereby "reveal[ing] a portion of their identities" (Watchtower v. Stratton, *supra*, 240 F.3d at 563) is patently wrong.

This error, however, enabled the court of appeals majority to conclude "that the governmental interests the Village seeks to promote [included] protecting its residents from fraud" without the kind of exacting review of the legislative record or the statutory text required by this Court when the principle of anonymity is at issue. Instead, the court of appeals majority accepted, as the "reason" for the ordinance, "after-the-fact" statements from Stratton's mayor and village solicitor that they were "aware of problems in other Ohio cities with door-to-door fraud when it passed the ordinance." Watchtower v. Stratton, *supra*, 240 F.3d at 566. Just because the city fathers claimed in the litigation below that they were "aware" of "door-to-door" fraud at the time of the enactment of the ordinance does not mean that the Stratton ordinance was enacted for that purpose. And just because they testified that they were aware of such

fraud elsewhere does not mean that they could enact such an ordinance without examining if such fraud threatened the Village of Stratton. Rather, as the McIntyre Court indicated, there must be evidence that a city's "actual experience" with door-to-door solicitation triggered the enactment of its ordinance, and that the ordinance was carefully and explicitly limited to dealing with fraud. McIntyre, *supra*, 514 U.S. at 334, n.7.

There is not the slightest suggestion that the court of appeals majority sought to discover whether the Stratton ordinance was prompted by any "actual experience" of village residents with door-to-door purveyors of fraud. By failing to engage in the kind of strict scrutiny of the legislative history commanded by McIntyre, the court of appeals easily pushed aside evidence that the ordinance might have been precipitated by the mayor's opposition to the door-to-door witness of the Jehovah's Witnesses, rather than by "awareness" of "several groups" who, in other Ohio cities, "perpetrate frauds by going door-to-door posing as solicitors or canvassers." *See* Watchtower v. Stratton, *supra*, 240 F.3d at 561, 566.[3]

Not only did the courts below fail to grapple with the actual legislative history of the Stratton ordinance, but they failed to examine the text of the ordinance to determine if it was carefully tailored to address only Stratton's legitimate interests

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[3] Instead of examining this conflicting evidence to ascertain whether the Stratton ordinance was really prompted by an "awareness" of door-to-door fraudulent and false solicitors, the courts below simply sanitized the administration of the ordinance, ordering the mayor to "delete any reference to Jehovah's Witnesses" from its "No Solicitation Form." Id., 240 F. 3d at 559. But entering an order to guard against the prejudicial enforcement of an ordinance certainly does not establish that the ordinance was rooted in a real concern about fraud and false statements, as the McIntyre ruling commands.

in preventing "fraud, misrepresentation or false statements." According to Section 116.06(c) of the ordinance, a permit, whether it is sought by a commercial solicitor or religious or political canvasser, may be denied if the mayor finds "[f]raud, misrepresentation or false statements made [by the applicant] in the course of conducting the activity."[4] The court of appeals majority correctly observed that Section 116.06(c) protects the residents of Stratton from persons using a religious or political cause as a "cover" for the perpetration of a commercial fraud. Watchtower v. Stratton, *supra*, 240 F.3d at 566-67. But the powers conferred upon the mayor by Section 116.06(c) are not limited to such commercial concerns.

Rather, the Stratton ordinance empowers the mayor to apply the same criteria of "fraud, misrepresentation and false statement" to religious or political canvassing, as to magazine subscription solicitations or the selling of pots and pans. In doing so, the ordinance utterly ignores the distinction that this Court laid down years ago between an ordinance governing uninvited "peddlers or hawkers" going door-to-door "soliciting orders for the sale of goods, wares and merchandise," and one targeting door-to-door canvassers promoting or explaining a cause containing "no element of the commercial." Breard v. Alexandria, 341 U.S. 622, 641-43 (1951).

While this Court has since ruled that commercial speech enjoys First Amendment protection, it has also noted that such speech is not "wholly undifferentiated from other forms." Therefore, commercial speech is not governed by the same rules as political or religious speech, including "the prohibition against prior restraints." Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U.S. 748, 771,

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[4] *See* Appendix E to Petition for a Writ of Certiorari herein. The Stratton ordinance is set forth as Appendix E (pp. 58a, *et seq.*) to the Petition.

n. 24. (1976). Although commercial speech may not be "provably false, or even wholly false," a statute may still prohibit such speech if it is "only deceptive or misleading" without running afoul of the First Amendment. Id., 425 U.S. at 771-772. In contrast, false defamatory statements about public officials or public figures may not be the basis of a libel suit unless those statements are about "facts," not "opinions." As Justice Powell once observed:

> Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges or juries, but on the competition with other ideas." [Gertz v. Robert Welch, Inc., 418 U.S. 323, 339-40 (1974).]

If the First Amendment dictates that defamatory "false opinions" may not be excluded from the marketplace by judges and juries, then surely the making of a nondefamatory "false statement," without regard to whether it is a statement of fact or one of opinion, cannot be the basis for a mayoral denial of a permit for a political canvasser to go door-to-door. Yet, that is what is authorized by Section 116.06(c) of the Stratton ordinance. Additionally, even false statements of fact are not actionable in a defamation suit, unless made intentionally, recklessly or negligently. *See* Id., 418 U.S. at 375-76. Nevertheless, under Section 116.06(c) the mayor may deny or revoke a permit for making any "misrepresentation or false statement" without regard to fault.

Moreover, Section 116.06(c) empowers the mayor to deny or revoke a permit to a religious canvasser if, in his opinion, that canvasser is perpetrating a religious "fraud." This Court closed the door to such government supervision of religious claims nearly 60 years ago:

> Freedom of thought, which includes freedom of religious belief, is basic in a society of free men..... Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs.... Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with determining whether those teachings contained false representations. [United States v. Ballard, 322 U.S. 78, 86-87 (1944).]

By failing to distinguish between commercial and religious and political speech, the Stratton ordinance has failed to differentiate between a constitutionally-legitimate justification for imposing a prior restraint in order to protect people from commercial fraud, and a constitutionally-illegitimate justification for imposing a prior restraint, including the forced disclosure of identity, in order to protect people from a political or religious "false" statement.

Moreover, the Stratton ordinance has failed to limit the mayor's scope of authority to only concerns related to "fraud, misrepresentation and false statements." According to Section 116.03(b)(6), the mayor may require, in addition to a "brief description of the nature and purpose of a applying canvasser's "cause," "[s]uch other information concerning the Registrant and its ... purpose as may be reasonably necessary to accurately describe the nature of the privilege desired." Additionally, Section 116.06(a) authorizes the mayor to deny or revoke a permit if he determines that the "information" provided by a Registrant is "incomplete."

The courts below found this grant of power so broad that they limited the mayor's power, with respect to Jehovah's Witnesses registrants, to requiring "only [a] 'note on the application that [they] seek[] to canvass as part of the Jehovah's Witnesses.'"

Watchtower v. Stratton, *supra*, 240 F.3d at 559. Had the courts below applied the McIntyre rule, they would have known that a special rule limiting the discretion of a government official to one class of applicants does not cure the unconstitutional intrusion upon the right to communicate without having to disclose one's identity. Had the courts below followed McIntyre, they would have concluded that Section 116.03(b)(6), when coupled with 116.06(a), demonstrates that the Stratton "ordinance plainly applies even when there is no hint of falsity." *See* McIntyre, *supra*, 514 U.S. at 344.

Thus, even though Sections 116.03(b) and (c) authorize denial of a permit upon evidence of fraud or false statement, the mayor's authority is not limited to the danger of purveyors of fraudulent information or false statements. Hence, as was true of the California ordinance in Talley and the Ohio statute in McIntyre, the Stratton ordinance requiring disclosure of the name and address of the person seeking permission to "promote or explain a cause" cannot be justified as a measure designed to combat fraud and misrepresentation.

B. The Stratton Ordinance is Not Narrowly Tailored to Protect the Legitimate Interest of Residential Privacy.

As was true of both the Ohio ordinance in McIntyre, *supra*, 514 U.S. at 344, and the Colorado statute in Buckley, *supra*, 525 U.S. at 186, the Stratton ordinance does contain one limitation. It applies only to door-to-door solicitations on private property. The limited scope of the Stratton ordinance does not, however, justifying excepting it from the First Amendment anonymity principle. To the contrary, the ordinance's permit system further undermines it.

To be sure, the court of appeals majority examined the ordinance to ascertain whether it protected Village "residents from ... undue annoyance in their homes," and determined that it did. The court observed that the "State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free society" and that the ordinance's registration provisions would serve as a deterrent against those who would go door-to-door "ignor[ing] a resident's wishes." Watchtower v. Stratton, *supra*, 240 F.3d at 565-66. But it conducted its analysis on the assumption that the Jehovah's Witnesses either had no First Amendment anonymity interest, or had so undermined that interest by appearing in person at the residential door that it need not be weighed in the balance. As pointed out above, this was clear error.

According to McIntyre and Buckley, a person does not lose his First Amendment protection from forced disclosure of name and address just because he shows his face to another person in the process of communicating with that person. Thus, Stratton's claim that forced disclosure of the name and address of the communicator was necessary to protect the integrity of private residents must be subjected to exacting scrutiny, just as this Court subjected the state claims of electoral integrity in those earlier cases, upholding such disclosure "only if it is narrowly tailored to serve an overriding state interest." McIntyre, *supra*, 514 U.S. at 343-46. *See also* Buckley, 525 U.S. at 204-05. The court of appeals majority below utterly failed to apply this test.

As interpreted and applied by the courts below, the ordinance provides that any person, no matter who they may be, "political candidates, Christmas carolers ... campaigners for social issues" (Watchtower v. Stratton, 240 F.3d at 570 (Gilman, J., dissenting)), must first register with the mayor, disclosing the

potential solicitor's name and address, in order to secure the mayor's permission not only to go door-to-door generally, but to each specific residential door within the village limits. Indeed, according to the text of Section 116.03(b)(5) of the ordinance, any person seeking the mayor's permission to promote or explain a cause from door-to-door is required, at that time, to include on his Solicitor's Registration Form "[t]he specific address of each private residence at which the Registrant intends to engage" in such conduct. Upon compliance, Section 116.04 of the ordinance provides that "[e]ach Registrant ... shall be furnished a Solicitation Permit," which authorizes the Registrant to visit only those premises "listed on the Registrant's Solicitor's Registration Form."

Finding this provision to be an "an onerous regulation that could potentially violate the exercise of constitutional rights," the court of appeals majority nonetheless agreed with the district court, ruling that "this problem was cured by the "Village allowing a Registrant to attach to the Registration Form a list of **willing** Village residents which is provided by the Mayor's office, ... a voluntary measure taken by the Village prior to the lawsuit." Watchtower v. Stratton, 240 F.3d at 559 (emphasis added). Instead of curing the problem, however, the judicially-approved change of the ordinance has only made it worse.

In order for the mayor to furnish to a registering solicitor "a list of willing Village residents," he must know which residents are willing to receive various types of uninvited solicitors and canvassers and which are not. There is no evidence that the mayor surveyed village residents to assemble an accurate list of each individual resident's desire, much less that the mayor kept an up-to-date list. Instead, Section 116.07(a) of the ordinance requires that a resident (or a residence's owner), in order to avoid being placed on the mayor's "willing resident" list, must

"register ... its property" with the mayor as required by Section 116.07(b). Section 116.07(b) requires the property owner or occupant to complete a "'No Solicitation Registration Form' at the office of the Mayor," containing: (1) "[t]he name and address of the owner or occupant who wishes to prohibit" uninvited canvassing and solicitation; (2) "[t]he specific address of each property at which the owner or occupant prohibits such conduct"; and (3) a "written and signed statement" giving notice of his desire to prohibit such conduct, the posting of a sign meeting minimum city standards, and specifying any exceptions to such prohibition.

Any resident or property owner of Stratton who does not comply with this section will appear on the mayor's list as a "willing" listener. *See* Watchtower v. Stratton, *supra*, 240 F.3d at 558. Armed with such a list, an intrepid solicitor or canvasser, licensed by the mayor, would knock on the door of every private residence on the list, assuming that any sign posted on the property to the contrary does not apply to him. After all, the ordinance provides explicit protection **only** for those residents who fill out a No Solicitation Form at the mayor's office, **and** post a No Solicitation sign meeting city standards. *See* Section 116.07(d). And, as the court of appeals majority admitted, only those residents who have filed a "No Solicitation Form" with the mayor's Office receive the protection of the ordinance. Watchtower v. Stratton, 240 F.3d at 558. Thus, instead of protecting the privacy of every resident in Stratton, the ordinance protects only those residents who have taken the time to go down to the mayor's office, fill out the No Solicitation Form, and secure the permission of the mayor to post a "visible" No Solicitation sign on their property. Only by meeting these requirements will the mayor have taken their names **off** the mayor's list of "willing Village residents," a list furnished to each solicitor or canvasser who secures a Solicitation Permit from the city.

Such a convoluted system of registration and permission is not designed to honor each village resident's individual decision to permit, or turn away, unwanted canvassers. Rather, it puts the power of decision in the hands of the mayor who decides that, if a resident has not filled out an official No Solicitation Form, then the resident must be "willing" to listen to uninvited solicitors and canvassers. Not only does the ordinance not provide protection to the unregistered resident, it may even undermine statutory protections that might otherwise be available to such residents, even if they have posted a no solicitation sign. According to Ohio Revised Code ("ORC") Section 2911.21, a person is guilty of a criminal trespass if he "recklessly enter[s] or remain[s] on the land or premises of another, as to which notice against unauthorized access or presence is given..." Surely, evidence that a canvasser entered upon the property of another in reliance upon the mayor's list indicating that a particular resident is "willing" to listen to his cause would undermine any claim by that resident that the uninvited canvasser had "recklessly entered or remained" on his property, even if that resident had posted some kind of no soliciting sign. Moreover, ORC Section 2911.21 requires that any sign posted by a resident must be posted "in a manner reasonably calculated to come to the attention of potential intruders." If a resident has failed to register with the mayor and posted a sign meeting city standards, then a court or jury could find that the resident has not met this statutory criterion, especially in light of the mayor's practice to furnish to "licensed" canvassers a list of "willing" residents containing that unregistered resident's address.

Additionally, by its terms, Section 116.07(a) provides that an "owner ... of private property," even though not an "occupant" thereof, may register the owned property with the mayor and, thereby, stop solicitations upon that property, not because the

occupant does not want them, but because the owner does not. Thus, the ordinance may prohibit solicitors and canvassers from calling on some residents who would welcome such uninvited calls.

Because the ordinance is both under-inclusive, being unprotective of some residents who desire no solicitation, and over-inclusive, being protective of an owner who is not the actual occupant of a residence, the ordinance fails the McIntyre anonymity test, which requires that, to force disclosure of a communicator's identity, the regulation must be "narrowly-tailored to serve an overriding interest." 514 U.S. at 343-46. Such a narrowly tailored ordinance would simply forbid any unauthorized person from going uninvited upon the private property of another who has posted a visible "no trespassing" or "no solicitors" sign. *See, e.g.*, ORC Section 2911.21(3)[5]. Such a straightforward prohibition would not only preserve the constitutional rights of religious and political canvassers, but those of the householder, "leav[ing] the decision as to whether distributers [sic] of literature may lawfully call at a home where it belongs — with the homeowner himself." Martin v. Struthers, *supra*, 319 U.S. at 148.

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[5] The current Ohio criminal trespass statute contains the following prohibition: "No person, without privilege to do so, shall do any of the following: ... (3) Recklessly enter or remain on land or premises of another, as to which notice against unauthorized access or presence is given by actual communication to the offender, or in a manner prescribed by law, or by posting in a manner reasonably calculated to come to the attention of potential intruders, or by fencing or other enclosure manifestly designed to restrict access...."

II. THE STRATTON VILLAGE ORDINANCE VIOLATES THE PRINCIPLE OF ANONYMITY EMBEDDED IN THE FREEDOM OF THE PRESS.

In McIntyre, Justice Thomas, concurring in the judgment, found the anonymity principle reflected in "the historical evidence ... that Founding-era Americans opposed attempts to require that anonymous authors reveal their identities on the ground that forced disclosure violated the "freedom of the press." McIntyre, *supra*, 514 U.S. at 361 (Thomas, J., concurring). Moreover, the anonymity principle predated the era of America's founding.

Writing in his COMMENTARIES ON THE LAWS OF ENGLAND, published in 1769, Sir William Blackstone asserted that the liberty of the press was established in England in 1694. IV W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND ("BLACKSTONE'S COMMENTARIES") 152, n. 2 (U. of Chicago Press facsimile edition: 1769). Prior to that time, no person could lawfully publish anything without having first secured a license to do so from the crown. As Blackstone explained it:

> The art of printing, soon after it's [sic] introduction, was looked upon ... as merely a matter of state, and subject to the coercion of the crown. It was therefore regulated ... by the king's proclamations, prohibitions, charters of privilege and of licence, and finally by the decrees of the court of starchamber which limited the number of printers, and of presses which each should employ, and prohibited new publications unless previously approved by proper licenses. [Id.]

In 1643, the poet John Milton challenged this English system of licensing, "attack[ing] government censorship in a well-reasoned treatise entitled *Areopagitica: A Speech of Mr. John*

Milton for the Liberty of Unlicensed Printing, to the Parliament of England[6] ..., which he did not bother to register," as required by the existing licensing laws. W. DAVIS, HISTORY, THOUGHT & CULTURE 1600-1815, at 25-26 (Univ. Press of America: 1993). Milton's defense of the liberty of the press was nearly contemporaneous with a strict licensing ordinance issued in 1637 by the Star Chamber, the terms of which "provided an elaborate scheme of licensing designed to prevent the appearance of unlicensed books," including the requirement that "**all books were to bear the names of the printer and the author**." SOURCES OF OUR LIBERTIES 242 (Perry, ed., Amer. Bar. Found.: N.Y.U. Press 1972) (emphasis added).

Fifty years after Milton published his *Areopagitica* treatise, the English Parliament allowed a successor licensing act to expire. Id., at 243, 305. Seventy-five years after that, Blackstone wrote with confidence that "[t]he liberty of the press is indeed essential to the nature of a free state." IV BLACKSTONE'S COMMENTARIES at 151. Blackstone explained that the liberty of the press "consists" of two governing principles. First, the civil government may "lay no *previous* restraints upon publications" (emphasis original); and second, "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public." Id. Otherwise, Blackstone concluded:

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[6] Milton's eloquent support of the freedom of the press remains unsurpassed: "...[T]hough all the winds of doctrine were let loose to play upon the earth, so truth be in the field, we do injuriously by licensing and prohibiting to misdoubt her strength. Let her and falsehood grapple; who ever knew truth put to the worse, in a free and open encounter. Her confuting is the best and surest suppressing.... What a collusion is this, whenas we are exhorted by the wise man to use diligence *to seek for wisdom as for hidden treasures* early and late, that another order shall enjoin us to know nothing but by statute." J. Milton, *Areopagitica*, reprinted in 3 HARVARD CLASSICS 227-28 (Collier & Son: N.Y.: 1909).

> To subject the press to the restrictive power of a licenser, as was formerly done ... is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government." [Id. at 152.]

Yet in 1998, 220 years after Blackstone wrote these words, Stratton enacted its Ordinance No. 1998-5, in which it placed in one man, the mayor, the "restrictive power of a licensor," empowering him to deny permission to any person who sought to go door-to-door to "promot[e] ... or explain[] ... any cause," if he decided that the person seeking permission was promoting a "fraudulent" or "false" cause or making statements that "misrepresented" that cause. *See* Sections 116.04 and 116.06(c). Further, as was the case with the 1637 Star Chamber's restrictive licensing scheme, which required disclosure of the author and printer of the book to be published, the Village of Stratton required the person seeking the mayor's permission to publish his views to disclose not only his name, but the name of the organization that he represents. As was true of the Star Chamber's 17th Century attempt to exercise control over printing, so it is true that Stratton Village's 20th Century attempt to exercise control over door-to-door disseminations violates the freedom of the press.

A. The "No Prior Restraint Principle" of the Freedom of the Press Precludes the Forced Disclosure of a Publisher's Name to the Government.

As noted above, a central feature of the press licensing system in 17th Century England was the required disclosure of the names of both the printer and the author as a prerequisite for the issuance of a license. Indeed, a licensing system, by its very nature, requires such a disclosure. It is not surprising, therefore, that the Stratton ordinance requires a person seeking

the mayor's permission to canvass door-to-door to reveal not only his name and address, but also the name and address of the organization with which the individual communicator is affiliated. Section 116.03(b)(1) and (3).

The court of appeals majority below concluded that such forced disclosure was a "helpful" tool in "preventing fraud," a useful measure "in its attempt to turn away perpetrators [of fraud] posing as Jehovah's Witnesses." Watchtower v. Stratton, *supra*, 240 F.3d at 566-67. This finding cuts the very heart out of the freedom of the press. As Blackstone noted, the press guarantee was deliberately designed to limit the government to punishing an individual's committing "fraud" **after** it has been perpetrated, not **before** by imposing prior restraints upon **all** publishers, legitimate and illegitimate alike. The court of appeals majority simply ignored this venerable rule, joining ranks with the Star Chamber, by ruling that it was perfectly legitimate for Stratton to take "reasonable" steps to "deter" fraud by requiring registration and licensing. Id.

Since the 1930's, this Court has consistently enforced a rule against statutes and ordinances that impose a prior restraint upon publications.[7] In Near v. Minnesota, 283 U.S. 697, 713

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[7] "'Any system of prior restraints comes to this Court bearing a heavy presumption against its constitutional validity.' ... The Government 'thus carries a heavy burden of showing justification for the imposition of such a restraint.'" New York Times Co. v. United States, 403 U.S. 713, 714 (1971). "[T]he First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjectures that untoward consequences may result. Our cases ... have indicated that there is a single, extremely narrow class of cases in which the First Amendment's ban on prior restraint may be overridden. Our cases have thus far indicated that such cases may arise only when the Nation 'is at war.'" Id., 403 U.S. at 726-27 (Brennan, J., concurring). The Stratton village mayor and solicitor may have declared war upon uninvited solicitors and canvassers. But that is not the kind of war this court has had in mind. *See* Near v. Minnesota,

(1931), Chief Justice Hughes proclaimed that it was the "essence of censorship" for government officials to place a "previous restraint" upon a publication in order to stop the dissemination of libelous statements:

> Public officers, whose character and conduct remain open to debate and free discussion in the press, find their remedies for false accusations in actions under libel laws providing for redress and punishment, and not in proceedings to restrain the publication of newspapers and periodicals.... The fact that the liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press from previous restraint in dealing with official misconduct. [Id., 283 U.S. at 718-19, 720.]

Under the Stratton ordinance, a mayor is empowered to deny a license to a door-to-door political canvasser, even one campaigning for office seeking to defeat the incumbent mayor, himself. All a mayor need do is conclude that a political opponent is spreading "false statements" about his person or his official conduct, and he could either deny or revoke the license. *See* Section 116.06(c). In doing so, a mayor could deprive his opposition of one of the most recognized and effective means of a successful campaign for public office. *See* Martin v. Struthers, *supra*, 319 U.S. 146; SHADEGG, S., HOW TO WIN AN ELECTION, p. 137 (Taplinger Pub. Co. 1964).

In fact, a mayor's discretion to deny or revoke a license on the ground of "fraudulent or false" conduct in relation to a "cause," whether it be political, religious, social or otherwise," is reminiscent of the kind of discretionary power granted to the City Manager of Griffin, Georgia, which was found to have

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283 U.S. 697, 716 (1931).

violated the freedom of the press over 70 years ago. *See* Lovell v. Griffin, 303 U.S. 444 (1938). While the Stratton ordinance does not grant to its mayor completely unbridled and open-ended discretion as the Griffin, Georgia city ordinance did, Chief Justice Hughes' observation that the Griffin ordinance comprehensively applied to "any literature," regardless of its content, led him to conclude that the ordinance "strikes at the very foundation of the freedom of the press by subjecting it to license and censorship." Id., 303 U.S. at 451. Similarly, because the Stratton ordinance applies to the promotion or explanation of "any ... cause" (Section 116.01), it too strikes at the very heart of that same freedom.

Yet, the court of appeals majority virtually ignored the Near and Lovell precedents. It appears that the majority simply equated a law requiring a "permit prior to going door-to-door" with a law "requiring an individual to obtain a permit prior to engaging in speech in a public forum." Watchtower v. Stratton, *supra,* 240 F.3d at 560. The two kinds of permits, however, are quite different.

Generally, a law requiring a permit to use the public street for a parade, or a publicly-owned auditorium, or other government-owned facility does not implicate the freedom of press, because it is not a **license to publish**, but rather a **license to use** a public facility. So long as such laws are "content-neutral," limited to regulating "time, place and manner" issues, they are constitutional regulations of the orderly and peaceful use of government property. *Compare, e.g.*, Cox v. New Hampshire, 312 U.S. 569 (1941) *with* Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557 (1995). Whenever a law requires a license to disseminate ideas, even in a public place, the law implicates the freedom of the press. Lovell v. Griffin, *supra*, 303 U.S. at 452 ("Liberty of circulating is as essential to that freedom as liberty of

publishing; indeed, without the circulation, the publication would be of little value.") And with the freedom of the press comes the concomitant protection of anonymity, as evidenced in Talley v. California, *supra,* 362 U.S. at 62-65.

By its express terms, the Stratton ordinance does not purport to be a "time, place and manner" licensure scheme governing the use of government property. Rather, its express purpose is to license communicative conduct. Just because the license is limited to door-to-door solicitors and canvassers does not transform it into a time, place and manner regulation. First of all, the terms of the ordinance are not limited to time, place and manner concerns, in that Section 116.06 authorizes the denial or revocation of a permit if a mayor concludes that a permit seeker or holder has engaged in "fraud, misrepresentation or false statements" in relation to the cause being promoted or explained. Concerns about the content of a communication have no place in a time, place and manner law. *See* Clark v. Community for Creative Non-Violence, 468 U.S. 288, 293 (1984) ("Expression, whether oral or written ... is subject to reasonable time, place or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech ... (citations omitted).")

Equally important, the ordinance applies only to door-to-door communicative activity, which this Court recognized as far back as 1943 to be a direct regulation of the very act of publication:

> While door to door distributors may either be a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. [Martin v. Struthers, *supra*, 319 U.S. at 145.]

Like the regulation of leafleting in Talley, the regulation of door-to-door communications implicates the principle of anonymity embraced by the freedom of the press:

> The obnoxious press licensing law of England, which was also enforced in the Colonies was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation of literature critical of the government.... Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes. [Talley v. California, *supra*, 362 U.S. at 64-65.]

For the same reasons, Stratton may not require the forced disclosure of the name and address of a person and his affiliated organization in order to obtain a permit to go door-to-door to promote or explain a cause.

B. The "No Editorial Function Principle" of the Freedom of the Press Precludes Forced Disclosure of the Communicator's Name to the Recipient.

According to Blackstone, the liberty of the press not only protects freedom from prior restraints, but also guarantees the right of "[e]very freeman to lay what sentiments **he pleases** before the public." IV BLACKSTONE'S COMMENTARIES, *supra*, at 151 (emphasis added). As this Court ruled in Miami Herald Publishing Co., Inc. v. Tornillo, 418 U.S. 241 (1974), it is not for the government to require a newspaper publisher to print a reply from a person criticized by that newspaper:

> The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public

> officials — whether fair or unfair — constitute the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press.... [Id., 418 U.S. at 258.]

This constitutional freedom from editorial control by the government surely extends with equal vigor to the newspaper front and editorial pages which traditionally contain stories from unidentified reporters and opinions by unsigned editorialists. Just as the government may not require a newspaper to print replies to articles critical of public officials or candidates for office, so also the government may not require the disclosure of the names of reporters and editorial writers. Otherwise, the government would breach the "barriers of the First Amendment because of its intrusion into the function of editors." Id., 418 U.S. at 258.

As a newspaper enjoys the full protection of the freedom of the press, including the right not to disclose which reporter wrote which story and which editor wrote which editorial, so the Jehovah's Witnesses have the right to protect the identity of their individual canvassers. After all, the freedom of the press does not just favor the established commercial, institutional press, but "every freeman" as Blackstone has attested. *See also* Lovell v. Griffin, *supra*, 303 U.S. at 452 ("The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty.... The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.")

Yet, the Stratton ordinance breaches this anonymity barrier, requiring anyone who secures a door-to-door solicitation permit

from the mayor to "carry upon his person his permit [and] exhibit [such permit] whenever he is requested to do so by any police officer or by any person who is solicited." Section 116.04. The permit, in turn, contains the registrant's name and information indicating "that the applicant has registered as required ...." Id. Forcing a permittee to display his Solicitation Permit requires him to abandon his constitutionally-protected "editorial function" to decide whether or not to communicate anonymously, as the registration requirements of the Stratton ordinance make his name and address and affiliated organization a matter of public record.

CONCLUSION

In sum, the Stratton ordinance entrusts its mayor with broad powers to prevent possible wrongdoing by some, but it does so in such a way that any such prevention can only be achieved at the unacceptable cost of depriving essential liberties to all. For the reasons stated, the decision of the court of appeals should be reversed, with instructions to strike down the ordinance in its entirety.

Respectfully submitted,

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IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICUS CURIAE* BRENNAN CENTER FOR JUSTICE IN SUPPORT OF NEITHER PARTY

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INTEREST OF THE *AMICUS CURIAE*

With the consent of the parties, the Brennan Center for Justice at NYU School of Law submits this brief *amicus curiae* in support of neither party.[1] The letters of consent have been filed with the Clerk of the Court.

The Brennan Center is a nonpartisan institute dedicated to a vision of inclusive and effective democracy. The Center unites the intellectual resources of the academy with the pragmatic expertise of the bar in an effort to assist courts, legislatures, and citizens in developing practical solutions to difficult problems in areas of special concern to Justice William J. Brennan, Jr. The Center has participated as *amicus curiae* or as counsel for a party or *amici* in a number of cases decided by this Court on issues affecting core ideals of democratic government, including *FEC v. Colorado Republican Federal Campaign Committee* (*I* and *II*), *Nixon v. Shrink Missouri Government PAC*, and *Anderson v. Roe*. The Center takes an interest in this case because of the implications of this Court's interpretation of *McIntyre v. Ohio Elections Commission* for laws throughout the nation that require campaign finance reporting and disclosure of mass advertising sponsors in federal and state elections.

---

[1] Pursuant to Supreme Court Rule 37.6, *Amicus* states that no counsel for a party authorized this brief in whole or in part and that no person or entity other than *Amicus*, its members, and its counsel contributed monetarily to the preparation or submission of this brief.

INTRODUCTORY STATEMENT AND SUMMARY OF ARGUMENT

This case involves a First Amendment challenge of a local ordinance regulating "uninvited peddling and solicitation upon private property." Stratton, Ohio, Ordinance 1998-5 (annexed as Appendix E to Petition for a Writ of Certiorari). The ordinance requires individuals who wish to engage in canvassing at private residences to obtain a permit from the municipality and to display that permit, which contains the canvasser's name, upon demand by the police or person canvassed. Petitioner contends that the ordinance violates its members' right to engage in anonymous door-to-door advocacy, relying upon this Court's decision in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

Amicus submits this brief in support of neither party to alert this Court to confusion that the decision in *McIntyre* has created among lower federal courts and state courts and to urge this Court to eliminate that confusion in deciding this case. *Amicus* urges this Court to clarify that federal, state, and local election-related reporting and disclosure requirements are constitutional, with only very narrow exceptions. Persons who face harassment are exempt from both reporting and disclosure requirements. But this Court has never suggested that anyone else is exempt from reporting, and the only speakers who have been held exempt from disclosure requirements on grounds other than potential harassment are lone pamphleteers and others engaged in one-on-one communications in ballot measure elections. *See* Point I.

These clarifications are needed because some lower federal courts and state courts have misconstrued *McIntyre* as

creating a constitutional right to virtually complete anonymity in elections, contrary to *McIntyre* itself and to other decisions of this Court. For example, one California appellate court held that, under *McIntyre*, California could not require a *candidate for office* who sent a *mass mailing* to voters attacking his opponent to disclose his identity on the face of the mailing. The California Supreme Court later reversed this case on jurisdictional grounds, without addressing the merits. *Griset v. Fair Political Practices Commission*, 23 P.3d 43 (Cal. 2001), *rev'g* 82 Cal. Rptr. 2d 25 (Cal. Ct. App. 1999). Courts in Arkansas, Colorado, Indiana, Maine, and Texas have similarly misapplied *McIntyre* to invalidate a number of common campaign finance disclosure laws. *See* Point II.

The interpretation of *McIntyre* defended in this brief *amicus curiae* advances compelling governmental interests while safeguarding fundamental First Amendment rights. Clarifying that *McIntyre* does not upset commonplace reporting and disclosure requirements, s*ee Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 430 (2000) (Thomas J., dissenting) ("States are free to enact laws that . . . require the disclosure of large contributions . . . ."), respects the state's interests in providing information and enforcing other campaign finance laws and, in the case of candidate elections, serves an anti-corruption interest as well. At the same time, recognizing the specific exceptions described in Point I continues this Court's protection of pamphleteers, petition circulators, and others engaged in one-on-one communications from heat of the moment harassment. *Amicus* therefore urges this Court to clarify that, notwithstanding *McIntyre*, reporting and disclosure requirements that states employ as a "means of curbing the evils of campaign ignorance and corruption," *Buckley v. Valeo*, 424 U.S. 1, 68 (1976) (*per curiam*), are constitutional, except as applied in those specific circumstances.

ARGUMENT

I.

THIS COURT HAS ESTABLISHED NARROW EXEMPTIONS FROM REPORTING AND DISCLOSURE REQUIREMENTS.

On the federal, state, and local level, governments guarantee voters access to election-related information in two ways. First, persons and organizations engaged in certain electoral activities, such as raising contributions or spending money on campaigns, may be required to file *reports* with public agencies. *See, e.g.*, 2 U.S.C. § 434(a) (setting forth reporting requirements for treasurers of political committees). Second, those persons and organizations may be required to *disclose* certain information directly to the recipients of election-related communications. *See, e.g.*, 2 U.S.C. § 441d(a) (requiring financiers of campaign advertising and solicitors of contributions to disclose in the communication their identity and whether the communication was authorized by any candidate). Throughout this brief we will refer to the first set of laws as "reporting requirements" and the second set of laws as "disclosure requirements."

As we explain below, this Court's two leading cases on reporting and disclosure, *Buckley* and *McIntyre*, establish the principal constitutional parameters for both types of requirements. Persons who face harassment are exempt from both reporting and disclosure requirements. But this Court has never suggested that anyone else is exempt from reporting, and the only speakers who have been held exempt from disclosure requirements on grounds other than potential harassment are lone pamphleteers and others engaged in one-on-one communications in ballot measure elections.

A. Reporting Requirements in Candidate Elections Are Constitutional, Except As Applied to Speakers Who Face a Reasonable Probability of Harassment.

In *Buckley*, 424 U.S. at 60-84, this Court upheld the broad reporting requirements of the Federal Election Campaign Act ("FECA") against claims that the law infringed on First Amendment associational and free speech rights. The Court held that three compelling governmental interests justified reporting requirements: (1) informing voters about a candidate's likely future performance and possible allegiances; (2) deterring actual and apparent corruption; and (3) enforcing contribution limits. *See id.* at 66-68. Under *Buckley*, "compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. But . . . there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved." *Id.* at 66 (citation omitted).

Buckley's approach to reporting requirements is notable for its deference to legislative judgments. The plaintiffs had challenged FECA's requirements that political committees maintain records with the name and address of those who make annual contributions in excess of $10 and report the name, address, occupation, and employer of those who contribute, in the aggregate, more than $100 annually. The Court agreed that these thresholds were "indeed low," but concluded that "we cannot require Congress to establish that it has chosen the highest reasonable threshold." *Id.* at 83. To the contrary, *Buckley* held that drawing the line was "best left in the context of this complex legislation to congressional discretion." *Id.*

The *Buckley* Court also rejected an overbreadth challenge based on the applicability of the requirements to minor as well as major political parties. The plaintiffs claimed that the First Amendment rights of minor parties were seriously burdened by the requirement that they disclose contributors, because their supporters were more susceptible to harassment. But the Court refused to carve out a blanket exemption for minor parties. *See id.* at 68-74.

While rejecting the facial constitutional challenge, *Buckley* recognized that the federal reporting requirements would be unconstitutional as applied to minor parties that could establish a reasonable probability of harassment. The Court noted that the NAACP had been excused from producing its membership lists after demonstrating that "'revelation of the identity of its rank-and-file members [had] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility.'" *See id.* at 69 (quoting *NAACP v. Alabama*, 357 U.S. 449, 462 (1958)). "No record of harassment on a similar scale was found" in *Buckley*, *id.*, and the Court therefore refused to except minor parties generally from federal reporting requirements. But the Socialist Workers Party made the requisite showing in *Brown v. Socialist Workers '74 Campaign Committee*, and the Court recognized that party's right to an exemption. *See* 459 U.S. 87, 102 (1982).

Two years after *Buckley*, this Court briefly reaffirmed the voters' compelling interest in electoral information, this time in ballot measure elections. *See First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978). *Bellotti* involved a Massachusetts criminal statute that prohibited banking and business corporations from making contributions or

expenditures to influence the vote on ballot measure initiatives, unless the initiatives materially affected corporate assets, property, or business. The Court invalidated the ban on First Amendment grounds but recognized that "[i]dentification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." *Id.* at 792 n.32; *cf. Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 294 n.4, 298-99 (1981) (noting that the government's interest in identifying the sources of support for and opposition to ballot measures could be met by an existing law requiring pre-election publication of a contributor list). Read together, *Buckley* and *Bellotti* affirm the constitutionality of reporting requirements in both candidate and ballot measure elections, except as applied to political players that can show a reasonable probability of harassment.

B. Disclosure Requirements Are Constitutional, Except As Applied to Individual Leafleteers and Others Engaged in One-on-One Communications About Ballot Measures.

This Court first considered the constitutionality of disclosure requirements in *McIntyre*, 514 U.S. 334. The Ohio Elections Commission had fined Margaret McIntyre for distributing unsigned homemade leaflets expressing Ms. McIntyre's opinion about an imminent local tax referendum. Ms. McIntyre's conduct violated an Ohio law prohibiting the circulation of unsigned documents designed to influence voters in an election. *See id.* at 338 n.3. Applying "exacting scrutiny," *id.* at 347, the Court held that Ohio could not justify a disclosure rule that prohibited even a lone pamphleteer like

Ms. McIntyre from anonymously distributing a leaflet about a ballot measure. *Id.* at 347-57.

Significantly, *McIntyre* distinguished the Ohio statute from laws requiring disclosure of the speaker's identity in two different situations. First, in candidate elections, the Court suggested that all disclosure requirements are constitutional, explaining that "[r]equired disclosures about the level of financial support a candidate has received from various sources are supported by an interest in avoiding the appearance of corruption . . . ." *Id.* at 354. The Court further stated: "In candidate elections, the Government can identify a compelling state interest in avoiding the corruption that might result from campaign expenditures. Disclosure of expenditures lessens the risk that individuals will spend money to support a candidate as a *quid pro quo* for special treatment . . . ." *Id.* at 356. The Court further recognized that the electorate's heightened informational interest in candidate elections justifies disclosure of information regarding both contributions to the candidate and "expenditures authorized by the candidate or his responsible agent." *Id.* at 354.

Second, in ballot measure elections, the Court recognized that disclosure rules could not constitutionally be applied to persons like Margaret McIntyre, a lone pamphleteer "acting independently and using only [her] own modest resources." *Id.* at 351. Thus, the Court distinguished the facts of *McIntyre* from those in *Bellotti*, noting that the rationale supporting disclosure of corporate spending in ballot measure campaigns "did not necessarily apply to independent communications by an individual like Mrs. McIntyre." *Id.* at 354. Because Ohio's disclosure rules failed to accommodate the Mrs. McIntyres of the world, the Court invalidated the law

as overbroad. But *McIntyre* "d[id] not thereby hold that the State may not in other, larger circumstances require the speaker to disclose its interest by disclosing its identity." *Id.* at 358 (Ginsburg, J., concurring).

Recently, in *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999) ("*ACLF*"), this Court sharply distinguished between the types of political activity to which the right to anonymity applies and the "other, larger circumstances" in which state reporting and disclosure laws may be applied constitutionally. In *ACLF*, a nonprofit public interest organization and individuals who regularly participated in Colorado's initiative and referendum process challenged a number of Colorado's petition requirements, including some reporting and disclosure requirements. The Court's decision in *ACLF* closely followed the reasoning in *Buckley* and *McIntyre*.

All nine Justices deciding *ACLF* agreed on the propriety of Colorado's law mandating the filing of reports disclosing of the names of initiative sponsors and the amounts spent gathering support for their initiatives.[2] The majority explained:

> In this regard, the State and supporting *amici* stress the importance of disclosure as a control or check on domination of the initiative process by affluent special interest groups. Disclosure of the names of initiative sponsors,

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[2] The Court did strike down a requirement that initiative proponents list the identity of paid circulators and their income from circulation, noting: "The added benefit of revealing the names of paid circulators and amounts paid to each circulator 'is hardly apparent and has not been demonstrated.'" *ACLF*, 525 U.S. at 203.

> and of the amounts they have spent gathering support for their initiatives, responds to that substantial state interest.
>
> Through the disclosure requirements that remain in place, voters are informed of the source and amount of money spent by proponents to get a measure on the ballot; in other words, voters will be told 'who has proposed [a measure],' and 'who has provided funds for its circulation.'

Id. at 202-03 (citations omitted); *see also id.* at 214 (Thomas, J., concurring) ("The reporting provision as modified by the courts below ensures that the public receives information demonstrating the financial support behind an initiative proposal before voting."); *id.* at 224 (O'Connor J., joined by Breyer, J., concurring in the judgment in part and dissenting in part) ("The disclosure required here advances Colorado's interest in law enforcement by enabling the State to detect and to identify on a timely basis abuse or fraudulent circulators. Moreover, like election finance reporting generally, Colorado's disclosure reports provide facts useful to voters who are weighing their options."); *id.* at 233 (Rehnquist, C.J., dissenting) (stating that Colorado's disclosure requirements as a whole "serve substantial interests and are sufficiently narrowly tailored to satisfy the First Amendment").

In contrast, the Court struck down an identification-badge requirement for petition circulators, calling *McIntyre* "instructive" on this question and noting that both cases "involve a one-on-one communication." *ACLF*, 525 U.S. at 199. Colorado had tried to defend its name-badge requirement

on the ground that it enabled the public to identify, and the state to apprehend, petition circulators who engaged in misconduct. Significantly, the Court held that this interest was satisfied by Colorado's requirement that petition circulators provide a notarized affidavit containing the circulator's name, address and signature, upon filing completed petition sections. *See id.* at 198. The Court stated that the affidavit requirement "exemplifies the type of regulation for which *McIntyre* left room." *Id.* at 200. The Court further explained that the affidavit requirement provided necessary information without exposing the circulator to "heat of the moment" harassment. *Id.* at 199. In contrast, "the name badge requirement" forces circulators to reveal their identities at the same time they deliver their political message; "it operates when reaction to the circulator's message is immediate and 'may be the most intense, emotional, and unreasoned.'" *Id.* at 198-99 (citations omitted). *ACLF* confirms that disclosure laws are constitutional, provided that individuals who leaflet or engage in other one-on-one political advocacy (and thus risk harassment by the recipient of their communication) are not required to reveal their names while disseminating their message.[3]

---

[3] *ACLF* suggests that Stratton, Ohio could constitutionally require that canvassers obtain a permit but not that they display it upon demand.

II.

THE LOWER FEDERAL AND STATE COURTS NEED CLARIFICATION OF THE MEANING OF *MCINTYRE*.

Reading this Court's campaign finance reporting and disclosure cases together, it is clear that there is no general right to engage in election-related activity anonymously. Rather, states are free to impose reporting and disclosure requirements in candidate elections, unless there is a record of harassment. States are also free to impose reasonable reporting and disclosure requirements in ballot measure elections, except with respect to lone pamphleteers or when there is potential for harassment, whether from public hostility or from recipients of face-to-face communications.

Unfortunately, not all lower federal courts and state courts have understood the distinctions developed in this Court's reporting and disclosure cases. Although several federal Courts of Appeals have understood McIntyre's limited holding, a few courts have gone so far as to hold that *no disclosure requirements are constitutional*, even in *candidate elections* and even when *mass communications* (such as direct mail or television broadcasts) are used. As a result, states seeking to promote their interests in electoral integrity and voter information face a confusing and conflicting array of cases. Clarification of this important area of law is therefore of immediate urgency.

A. Courts Are Divided in Their Interpretations of *McIntyre*.

Three federal circuit courts have understood that *McIntyre* creates only a very limited exception to the government's ability to impose disclosure requirements. Two cases involved a federal disclosure requirement applicable to expenditures for communications expressly advocating the election or defeat of a clearly identified candidate for federal office and to contribution solicitations. *See* 2 U.S.C. § 441d(a). The specific provision at issue in those cases requires any such communication or solicitation that is not authorized by a federal candidate, an authorized political committee of a candidate, or its agents to state the name of the person who paid for the communication and that the communication is not authorized by any candidate or candidate's committee. *See id.* § 441d(a)(3). The third case involved a similar state law. All three upheld the challenged provisions.

Most recently, in *Federal Election Commission v. Public Citizen*, 268 F.3d 1283, 2001 WL 1193892 (11th Cir. Oct. 10, 2001) (*per curiam*), the Eleventh Circuit upheld the federal disclosure requirement as applied to expenditures. The court concluded that "the candidate authorization disclosure is narrowly tailored to serve the overriding governmental interest in assisting voters in evaluating the candidates." *Public Citizen*, 2001 WL 1193892, *1. One judge dissented, relying upon *McIntyre*.

In *Federal Election Commission v. Survival Education Fund*, the Second Circuit upheld the same provision as applied to solicitations. *See* 65 F.3d 285, 298 (2d Cir. 1995). That court held that the federal disclosure requirement was justified (1) to "enable[] the solicitee to contribute money to those

groups which truly reflect his or her beliefs," (2) to deter "clandestine corruption of candidates," and (3) to "ensure that private citizens, in responding to a solicitation, do not unintentionally violate FECA's contribution limitations." *Id.* at 297. The court further stated that the requirements were "far more narrowly tailored than those of the Ohio statute in *McIntyre*." *Id.* at 298.[4]

Finally, in *Kentucky Right to Life v. Terry*, 108 F.3d 637, 647-48 (6th Cir.), *cert. denied*, 522 U.S. 860 (1997), the Sixth Circuit considered the constitutionality under *McIntyre* of a Kentucky law providing that all campaign material expressly advocating the election or defeat of a clearly identified candidate must include the name and address of the individual or committee that paid for the communication. The Sixth Circuit agreed with the state that the law was justified because it "prevents actual and perceived corruption by immediately notifying the public of any possible allegiance a particular candidate may feel toward the publisher" and because it is "a method of detecting those expenditures which are not truly independent by providing a paper trail to detect violations by unscrupulous PACs routing expenditures through individuals." *Id.* at 648.[5]

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[4] The Connecticut Supreme Court relied upon *Federal Survival Fund* in upholding a state disclosure law in candidate elections. *See Seymour v. Elections Enforcement Comm'n*, 762 A.2d 880, 889 (Conn. 2000). But, reflecting the current confusion about *McIntyre*, the court suggested the result might be different if the disclosure law involved ballot measure elections. *Id.* at 886-87.

[5] *See also Gable v. Patton*, 142 F.3d 940, 945 (6th Cir. 1998) (recognizing the possibility of "an as-applied constitutional challenge [to the Kentucky law] by someone convicted of distributing a small number of anonymous circulars"), *cert. denied*, 522 U.S. 1177 (1999).

Unfortunately, other federal and state courts have misconstrued *McIntyre* as holding that the government may *never* impose a disclosure requirement on *anyone*, even on candidates, political committees, or others engaged in mass election-related communications. For example, a California appellate court held that, under *McIntyre*, California could not require a *candidate for office* who sent a *mass mailing* to voters attacking his opponent to disclose his identity on the face of the mailing. Fortunately, the error of this case only temporarily undermined the state's interests in disclosure, because the California Supreme Court reversed the appellate court on jurisdictional grounds. *See Griset*, 23 P.3d at 702, *rev'g* 82 Cal. Rptr. 2d 25.

The California example is not isolated. Just this past October, a Texas appellate court struck down under *McIntyre* a state statute requiring one who has contracted to print or to publish a political advertisement -- in this case, as in *Griset*, a bulk mailing opposing a candidate in a candidate election --to identify the sponsor in the advertisement. *See State v. Doe*, -- S.W.3d. --, 2001 WL 1223732 (Tex. App. Oct. 16, 2001). Only the dissenting judge recognized that the Texas statute involved "larger circumstances" justifying disclosure under *McIntyre*, noting: "Without a disclosure requirement, it will be impossible for a state to punish corporate acts of illegal expenditures or contributions because an anonymous speaker/author can hide faceless behind an anonymous individual who contracts or agrees with the corporate printer, publisher, or broadcaster to distribute his message." *Id.* at *10 (Lagarde, J., dissenting).

These cases are among a host of others misreading *McIntyre* as preventing *any* disclosure of identifying information on the face of election-related material that is to be mailed, broadcast, or otherwise widely distributed. *See, e.g.*,

Citizens for Responsible Gov't State Political Action Comm. v. Davidson, 236 F.3d 1174, 1198-1200 (10th Cir. 2000) (striking down, on authority of *McIntyre* and *ACLF*, Colorado requirement that donors who make independent expenditures in excess of $1,000 include identifying information in any political message produced by the expenditure); *Yes for Life Political Action Comm. v. Webster*, 74 F. Supp. 2d 37, 42 (D. Me. 1999) ("I conclude that so long as *McIntyre* is binding precedent, Maine may not constitutionally require a PAC to identify itself in advocacy materials it authorizes or pays for."); *Arkansas Right to Life State Political Action Comm. v. Butler*, 29 F. Supp. 2d 540, 547-550 (W.D. Ark. 1998) (striking down Arkansas statute requiring any person making an independent expenditure to identify itself in all communications and state that the communication is not authorized by a candidate or candidate committee), *cert. denied*, 525 U.S. 1145 (1999); *Stewart v. Taylor*, 953 F. Supp. 1047, 1053-56 (S.D. Ind. 1997) (striking down under *McIntyre* an Indiana law requiring sponsor identification and an authorization statement on any advertisement in support of or in opposition to a candidate, except where disclosure is impractical because of the size or shape of the item). These misinterpretations have created an unnecessary uncertainty about the constitutionality of disclosure provisions that only this Court can resolve.

B. Misreadings of *McIntyre* Are Preventing States from Achieving Compelling Governmental Interests Recognized by This Court.

As a result of widespread confusion among the lower courts, some jurisdictions are governed by rulings that *McIntyre* created only a narrow exemption to disclosure requirements, applicable to lone pamphleteers and others engaged in one-on-one communications in ballot measure elections, while others

operate under decisions that misread *McIntyre* as creating a constitutional right for individuals, entities, political committees and even candidates to engage in anonymous mass mailings or broadcast advertisements expressly advocating the election or defeat of a candidate or the adoption or defeat of a ballot measure. In the meantime, states are unnecessarily losing decision-making authority with respect to the conduct of their own elections and citizens are unnecessarily losing their ability to make informed electoral decisions. Unless this Court firmly establishes the narrow scope of *McIntyre*, we will be well on our way toward fulfilling Justice Scalia's dire prediction that "[i]t may take decades to work out the shape of this newly expanded right-to-speak-incognito, even in the elections field." *McIntyre*, 525 U.S. at 381 (Scalia, J., joined by Rehnquist, C.J., dissenting).

The narrow scope of *McIntyre* makes sense, because "in the case of a handbill written by a private citizen who is not known to the recipient, the name and address of the author add little, if anything, to the reader's ability to evaluate the document's message," *McIntyre*, 514 U.S. at 348-49, and disclosure exposes speakers to the risk of heat of the moment harassment only during one-on-one communications. When substantial resources are invested in direct mail or broadcast advertising, on the other hand, voters have a heightened interest in knowing who is financing the message, whereas heat of the moment harassment is impossible. Legitimate concerns about other forms of harassment can be remedied with as-applied exemptions from disclosure rules under *Buckley* and *Brown*.

When the "larger circumstances" of expensive, impersonal, mass communications are involved, disclosure requirements serve compelling government interests in providing information, preventing corruption (in candidate

elections), and aiding in the enforcement of other campaign finance laws. Disclosure requirements provide valuable information to the public about candidates and about the supporters or opponents of candidates and ballot measures, information that the average citizen has neither the time nor resources to ferret out and analyze. In addition, as *Survival Education Fund* recognized, disclosure also makes it easier for campaign contributors to comply with laws limiting the amount of contributions that individuals may make to candidates; a contributor who is unaware that an organization is soliciting funds with a candidate's authorization might inadvertently exceed the limit on contributions to the candidate when donating to the group. Finally, without disclosure, it is more difficult to uncover both the potentially corruptive influence of large contributions or expenditures in candidate campaigns and efforts to hide illegal expenditures behind anonymous individuals.

The interests in electoral integrity, an informed electorate, and compliance with the law are unquestionably concerns of the highest order. The federal and state governments should have the authority they need to advance those interests through reasonable reporting and disclosure laws. To protect that authority, this Court should clarify in this case that reporting requirements are constitutional, unless a party can demonstrate a record of harassment, and that disclosure requirements do not violate the First Amendment as long as pamphleteers and other advocates engaged in face-to-face communications are exempt.

CONCLUSION

For the foregoing reasons, we urge this Court to clarify the meaning of *McIntyre* in accordance with the analysis set forth above.

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Respectfully submitted,

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IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., *et al.*,

Petitioners,

v.

VILLAGE OF STRATTON, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICUS CURIAE CENTER FOR INDIVIDUAL FREEDOM IN SUPPORT OF PETITIONERS

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On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

INTEREST OF AMICUS CURIAE[1]

The Center for Individual Freedom is a nonpartisan, nonprofit organization with the mission to protect and defend individual freedoms and individual rights guaranteed by the U.S. Constitution, including, but not limited to, free speech rights, property rights, privacy rights, freedom of association, and religious freedoms. Of particular importance to the Center in this case are constitutional protections for the freedom of speech and association, including each citizen's freedom to engage in anonymous speech and association on politics, religion, culture, and other matters of interest.

[1] This brief is filed with the written consent of all parties. No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *Amicus* or its counsel, make a monetary contribution to the preparation or submission of this brief.

STATEMENT

This case involves an attempt by the Village of Stratton, Ohio, to regulate persons who go door-to-door to promote or explain, among other things, political, religious, or social causes or organizations. While a number of the provisions, such as the requirement to obey a person's posted desire not to receive solicitations and penalties for fraud committed by solicitors or commercial salespersons, are sensible restrictions on wrongful conduct, the only issue on appeal is whether the First Amendment forbids the further requirement that speakers wishing to go door-to-door disclose their names and addresses in a permit application and display the permit containing their names if asked by a person to whom they are speaking. The Jehovah's Witnesses, having experienced harassment in Stratton before, and sensibly fearing further harassment, challenged the Village's disclosure requirements as a violation of their First Amendment right to engage in anonymous speech. Both the District Court and the Sixth Circuit rejected that challenge, largely ignoring the teachings of this Court regarding the importance of anonymity in preserving the freedom of speech.

SUMMARY OF ARGUMENT

The freedom of individuals anonymously to express potentially unpopular ideas and viewpoints is a significant and valuable component of the First Amendment. Anonymity is frequently a necessary shield protecting unpopular speakers from harassment and intimidation by a hostile government or public. History has repeatedly demonstrated the value of that shield, and our public discourse is far richer for its existence. Speakers who have chosen anonymity have forced hostile opponents to confront the ideas expressed rather than the individuals expressing them. Because anonymity provides the requisite security for individuals to speak freely, compelling speakers to disclose their identities to a potentially hostile government and public abridges the freedom of speech. Laws

compelling such disclosure thus should be subject to strict scrutiny.

Regarding the particular disclosures compelled in this case, the interests identified by the Sixth Circuit do not justify the First Amendment burden imposed by the Village of Stratton. Incapable of finding any direct connection between the compelled disclosures and the fraud-prevention and privacy interests asserted by the Village, the Sixth Circuit instead held that the broad prophylactic disclosure requirement was justified as an indirect means of facilitating the enforcement of other direct prohibitions on fraud and invasion of privacy. But an identical and equally tenuous enforcement interest was raised and rejected in *McIntyre* v. *Ohio Elections Commission*, 514 U.S. 334 (1995), and should be rejected here as well. The Sixth Circuit's attempt to distinguish *McIntyre* on the ground that the interest in anonymity is minimal where speakers have already disclosed their physical identity simply ignores the fact that Mrs. McIntyre also had disclosed her physical identity by handing out her leaflets in person at a public meeting, yet was still found to have a right to refrain from further revealing her name on those leaflets.

ARGUMENT

In addressing whether the First Amendment prohibited the Village of Stratton from requiring individuals to obtain and display a permit containing their name in order to engage in door-to-door speech and advocacy, the Sixth Circuit speculated that "individuals going door-to-door to engage in political speech are not anonymous by virtue of the fact that they reveal a portion of their identities – their physical identities – to the residents they canvass." *Watchtower Bible and Tract Society of New York, Inc.* v. *Village of Stratton*, 240 F.3d 553, 563 (CA6 2001). The court failed to see any added value in preserving name-anonymity, and held that the requirement that speakers reveal their names does not "rise[] to the level of impinging on First Amendment protected speech the Court

sought to protect" in *McIntyre*. *Id.* The Sixth Circuit further distinguished *McIntyre* on the ground that this Court there applied strict scrutiny, whereas the disclosure requirement in this case was being analyzed under intermediate scrutiny.

The Sixth Circuit erred both in the lack of constitutional value it placed on keeping one's name anonymous and in its attempts to distinguish *McIntyre*. The disclosure of an individual speaker's name is a significantly greater burden on speech than the mere disclosure of physical appearance arising from handing out literature or engaging in conversation. Furthermore, the compelled disclosure in this case should have been analyzed under strict scrutiny, though given the interests allegedly served by the disclosure requirement it cannot survive *any* level of First Amendment scrutiny.

I. ANONYMOUS SPEECH SERVES ESSENTIAL FIRST AMENDMENT PURPOSES AND WARRANTS STRONG PROTECTION.

Individual anonymity often is a necessary prerequisite to the exercise of fundamental individual rights. In the voting context, for example, the secret ballot is a primary guarantor of an individual's freedom to exercise the franchise without fear of retaliation by potentially hostile government or private actors. *McIntyre*, 514 U.S. at 343 ("This tradition [of anonymity] is perhaps best exemplified by the secret ballot, the hard-won right to vote one's conscience without fear of retaliation."); *Burson* v. *Freeman*, 504 U.S. 191, 199-206 (1992) (plurality opinion) (discussing the right to vote and the development of the secret ballot as the solution to voter intimidation and election fraud).

So too in the context of speech and association, anonymity often is an essential element of protection for an individual's free exercise of First Amendment rights. As this Court has repeatedly recognized, the deprivation of anonymity poses a significant burden upon and deterrent to both speech

and association, particularly where an individual associates with a controversial group or voices an unpopular idea. In *NAACP* v. *Alabama*, for example, this Court observed that

> [i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective * * * restraint on freedom of association * * *. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. * * * Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

357 U.S. 449, 462 (1958). Likewise in connection with speech, this Court has recognized that the "decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible." *McIntyre*, 514 U.S. at 341-42. And as this Court noted in *Talley* v. *California*, 362 U.S. 60, 64 (1960), "[p]ersecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all."[2]

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[2] Anonymity also implicates the persuasive and informational character of speech, altering, for better or worse, how listeners will receive any given message. "[A]n advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for a writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent." *McIntyre*, 514 U.S. at 342. Alternatively, a listener may discount a message based on the unwillingness of a speaker to include in that message his identity or organizational affiliation. Such effects, however, are a function of the content and communicative impact of the speech and the utility of such content is for the speaker and the listener to judge, not for the government to dictate. *See id.* ("[A]n author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.").

> Anonymity is a shield from the tyranny of the majority. *See generally* J. Mill, On Liberty and Considerations on Representative Government 1, 3-4 (R. McCallum ed. 1947). It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society.

McIntyre, 514 U.S. at 357.

The protective function of anonymous speech is particularly relevant for persons seeking to keep their names anonymous even while they might be willing to speak in person and thus disclose their physical appearance. Access to a person's name provides far more avenues for retaliation and harassment than does temporary exposure of a person's physical appearance. For example, if an anonymous canvasser encounters severe hostility from a listener, he can simply end the conversation and walk (or run) away. While it is surely possible that he may later encounter and be recognized by the hostile listener, that risk would seem somewhat limited if they are not otherwise acquainted and do not frequent the same locations. A canvasser forced to disclose his name to a listener who then turns out to be hostile has a legitimately greater concern that the speaker will trace him by means of his name and potentially identify his address, telephone number, employment, and other personal information. Rather than being able to retreat from such hostility, the speaker risks having the hostility brought to him. And where it is the government that is hostile to the speaker's message, there are even more options for gathering information, and avenues for harassment and retaliation, once the speaker's name is on file. Such risks are materially greater than the risks associated with simple physical recognition.

This Court has recognized the added risks and burdens of compelled name disclosure in the recent case of *Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U.S. 182

(1999). There, in the context of circulators collecting signatures for an initiative petition, and a requirement that they display badges with their names on them, this Court observed that "the name badge requirement 'forces circulators to reveal their identities at the same time they deliver their political message,' * * * it operates when reaction to the circulator's message is immediate and 'may be the most intense, emotional, and unreasoned.'" *Id.* 198-99 (quoting court of appeals decision below, citation omitted). Loss of name anonymity, even where a speaker will already be physically revealed, thus poses a significant deterrent to speech and to speakers. *See id.* at 197-98 (discussing evidence in the district court showing that: name badges "'inhibit[] participation in the petitioning process'"; "'[W]ith [circulators'] name on a badge, it makes them afraid.'"; and that a name badge requirement "'very definitely limited the number of people willing to work for [petition organizers] and the degree to which those who were willing to work would go out in public'").

The loss of name-anonymity in the context of personal interaction is thus especially burdensome to the exercise of First Amendment rights:

> The injury to speech is heightened for the petition circulator because the badge requirement compels personal name identification at the precise moment when the circulator's interest in anonymity is greatest. * * * For this very reason, the name badge requirement does not qualify for inclusion among the "more limited [election process] identification requirement[s]" to which we alluded in *McIntyre*.

Id. at 199 (*quoting* 514 U.S. at 353) (brackets in *Buckley*); *see also id.* at 217 (O'Connor, J, concurring in the judgment in part and dissenting in part) ("I agree with the Court that requiring petition circulators to wear identification badges, specifically name badges, * * * should be subject to, and fails, strict scrutiny. * * * The identification badge introduces into the one-on-one dialogue of petition circulation a message the

circulator might otherwise refrain from delivering, and the evidence shows that it deters some initiative petition circulators from disseminating their messages.").[3] Given the significant concerns about harassment and hostility, name-anonymity provides an important level of security that allows the freedom of speech to be exercised.

The value of having the choice to remain anonymous in preserving the freedom of speech can be seen by the numerous instances throughout history where speakers felt the need for anonymity in order to express potentially unpopular ideas or viewpoints. As this Court observed in *Talley*, 362 U.S. at 64, "[a]nonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind." Likewise in *McIntyre*, this Court recalled that "[g]reat works of literature have frequently been produced by authors writing under assumed names," citing to Mark Twain, O. Henry, and the numerous pseudonyms used by Benjamin Franklin. 514 U.S. at 341 (footnote omitted).

Anonymity has likewise played a central role in public advocacy. In a thorough and compelling historical discussion of the Framer's views regarding anonymous speech, Justice Thomas's opinion in *McIntyre* offered ample evidence that anonymity plays an important role in shielding speakers who

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[3] This Court in *Buckley* v. *ACLF* analyzed the badge requirement in the context of the assumed validity of an affidavit requirement that required a statement of the circulator's name and address when the petition was finally submitted. While this Court suggested in *dicta* – having denied the cross-petition for review on the issue, 525 U.S. at 191 n. 10 – that the affidavit requirement might be permissible, it did so in the context of regulating the elections process, which, as the quoted passage indicates, constitutes a unique situation that raises especially compelling interests central to the democratic process and gives States some additional leeway. *Id.* at 191. The interest in ensuring a fair election process is not even remotely analogous to the interests in this case. And this Court's rejection, as a violation of anonymity, of the requirement that circulators be listed by name in payment reports suggests that even in the elections context, *id.* at 204, the dicta regarding affidavit disclosures ought not be over-read.

voice potentially unpopular views, and that the Framers viewed the choice to remain anonymous as a component of the freedom of speech and the press. "There is little doubt that the Framers engaged in anonymous political writing. The essays in the Federalist Papers, published under the pseudonym of 'Publius,' are only the most famous example of the outpouring of anonymous political writing that occurred during the ratification of the Constitution." 514 U.S. at 360 (Thomas, J., concurring in the judgment). Another famous example of the significance of anonymity in protecting speech is the 1735 Zenger trial, which revolved around the publication of anonymous political pamphlets criticizing the Crown Governor of New York and which "signified at an early moment the extent to which anonymity and the freedom of the press were intertwined in the early American mind." *Id.* at 361

Various rebuffed attempts to force the identification of an anonymous author likewise demonstrate the significant interrelation between anonymity and the freedom of speech and the press. *See, e.g., id.* at 361-62 (discussing opposition, on free-press grounds, to an attempt in the Continental Congress to force disclosure of the identity of "Leonidas," who had criticized the government in an article in the Pennsylvania Packet); *id.* at 362 (discussing defense in the New Jersey State Assembly against an effort to force a publisher to reveal the author of an anonymous attack by "Cinncinatus" on the Governor and the College of New Jersey); *id.* at 362-63 (discussing letters by the Governor of New Jersey under the pseudonym "Scipio" supporting anonymity in public discourse as part of the freedom of the press). Those early views regarding the nature of free speech and a free press give content and context to the phrases "freedom of speech" and "of the press" as later used in the First Amendment and protected from abridgment.

This Court has likewise recognized the historical role of anonymity in political and economic discussion. *See, e.g.,*

Talley, 362 U.S. at 64-65 (discussing anonymous speech surrounding the ratification of the Constitution); *Lovell* v. *City of Griffin*, 303 U.S. 444, 452 (1938) (anonymous pamphlets "have been historic weapons in the defense of liberty").[4]

Recognizing that anonymity has great value in allowing the freedom to express potentially unpopular viewpoints and is intertwined with both historical and present understanding of the freedoms of speech, association, and the press, however, is not to say that it may never be abused for improper purposes. As Justice Scalia has correctly observed, anonymity "facilitates wrong by eliminating accountability, which is ordinarily the very purpose of the anonymity." *McIntyre*, 514 U.S. at 385 (Scalia, J., dissenting). The majority in *McIntyre* likewise observed that the "right to remain anonymous may be abused when it shields fraudulent conduct." 514 U.S. at 357.

However, notwithstanding that "political speech by its nature will sometimes have unpalatable consequences, * * * in general, our society accords greater weight to the value of free speech than to the dangers of its misuse." *Id.* (*citing Abrams* v. *United States*, 250 U.S. 616, 630-631 (1919) (Holmes, J., dissenting)). Indeed, the potential for abuse is an inherent risk of every freedom, and the remedy for such abuse must be to attack it directly rather than to extinguish the freedom prophylacticly. As "Publius" noted regarding the "dangerous vice" of "faction" in a democracy, one method of removing the causes of faction is "by destroying the liberty which is essential to its existence." Federalist No. 10, The

[4] While jurists may differ on whether constitutional history and text establish merely the general right to be protected, or whether each particular safeguard of that right must have historical antecedents, in this case there is no conflict in the result under either approach.

Federalist Papers 54-55 (Van Doren ed., Easton Press Edition 1979). But it

> could never be more truly said than of [that] remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an ailment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts fire its destructive agency.

Id. at 56. It would likewise be folly to abolish the option of anonymity in speech, which is essential to true freedom of speech, in order to eliminate the occasional unscrupulous act that it may facilitate.[5] This Court has long held that "[b]road prophylactic rules in the area of free expression are suspect," and that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button*, 371 U.S. 415, 438 (1963) (citations omitted). Instead of sweeping prophylaxis, the Constitution requires that we respond directly against the wrongdoing itself, even if that is made more difficult by the anonymity. As this Court has "reaffirm[ed] simply and emphatically," the "First Amendment does not permit the State to sacrifice speech for efficiency." *Riley* v. *National Fed'n of the Blind of North Carolina*, 487 U.S. 781, 795 (1988); *id.* at 803 (Scalia, J., concurring in part and concurring in the judgment) ("Where core First Amendment speech is at issue, the State can assess

[5] While anonymous speech may well be capable of being abused for unlawful purposes, based on the sparse evidence in this case such abuse is by far the exception rather than the rule. Here there actually is no evidence of such abuse at all, but only the anticipation of abuse based upon an uninformative discussion of unspecified problems with solicitors elsewhere in Ohio. *See Watchtower*, 240 F.3d at 566. There is no indication that anonymity was a component of such problems or that Ohio authorities were unable, due to anonymity, to enforce against any substantive legal violations by such solicitors.

liability for specific instances of deliberate deception, but it cannot impose a prophylactic rule requiring disclosure even where misleading statements are not made.").[6]

The consequence of the practical and historical interrelation between anonymity and First Amendment freedoms is that laws restricting anonymity and compelling disclosure of a speaker's identity should be subject to strict scrutiny. Such heightened scrutiny is required in this case for several reasons. First, as in *McIntyre*, the disclosure requirement here "is a regulation of pure speech." 514 U.S. at 345. The law applies to persons who wish to do nothing more than initiate a conversation "promoting" or "explaining" any "organization or cause." *Watchtower*, 240 F.3d at 558. Such a direct regulation of speech, unlike a regulation of conduct that incidentally burdens speech, is subject to strict scrutiny. *See Buckley* v. *ACLF*, 525 U.S. at 209 (Thomas, J., concurring in the judgment) ("The challenged badge requirement * * * directly regulates the content of speech" by requiring "that all petition circulators disclose, at the time they deliver their political message, their names and whether they were paid or unpaid. Therefore, the regulation must be evaluated under strict scrutiny.").

Second, although the disclosure requirement is arguably viewpoint-neutral, "it is a direct regulation of the *content* of speech," compelling speakers to convey specific information; in this case their names. *McIntyre*, 514 U.S. at 345 (emphasis added) (discussing Ohio law compelling disclosure of identi-

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[6] Despite any limited potential for abuse, the freedom to speak anonymously must be the rule. Abrogation of that freedom must be rigorously justified by the state, rather than, as some might suggest, an exception to be justified in specific instances by the speaker as being "needed to avoid 'threats, harassment, or reprisals.'" *McIntyre*, 514 U.S. at 385 (Scalia, J., dissenting) (*quoting NAACP* v. *Alabama*, 357 U.S. 449 (1958)). Placing such a burden on speakers who – as in this case -- may well fear the very authorities to whom they must justify their concerns would likely compound the problem and open up additional avenues for harassment.

fying information of sponsoring organization).[7] Furthermore, the categories of speech subject to the permit and disclosure requirements are "defined by their content," *id*., in that, for non-commercial matters, they cover only promoting or explaining an organization or cause, but not other common forms of door-to-door speech unrelated to organizations or causes.[8]

Third, at least as applied to advocacy of political or religious organizations and causes, the disclosure regulations burden core First Amendment speech. *See, e.g., Meyer* v. *Grant*, 486 U.S. 414, 420 (1988) ("a limitation on political expression [is] subject to exacting scrutiny"); *Lovell*, 303 U.S. at 452 (referring, in a case involving distribution of literature by Jehovah's Witnesses, to the "vital importance of protecting this essential liberty" of distributing pamphlets and finding the licensing ordinance "void on its face").

Ignoring the lessons of *McIntyre*, the Sixth Circuit declined to apply strict scrutiny and looked to cases involving permit requirements rather than disclosure laws in order to apply the less rigorous scrutiny for time-place-manner restrictions and restrictions on conduct having incidental effects on speech. *See Watchtower*, 240 F.3d at 560 & n. 4 (citing *For-*

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[7] While this Court should apply strict scrutiny even if the requirement is viewpoint neutral, just as in *McIntyre* the disclosure requirement here arguably "places a more significant burden on advocates of unpopular causes than on defenders of the status quo." 514 U.S. at 345 n. 8.

[8] It is, one supposes, remotely *conceivable* that the Village would apply its permit and disclosure requirements to the frequent unexpected speech that daily occurs at front doors, but it is not likely. Imagine needing a permit to knock on doors in Stratton asking: "Have you seen Timmy, I think he was around here playing with Johnny?"; "Have you seen my dog Buddy, I last saw him chasing Millie around the corner?"; "Can I borrow a cup of sugar?"; or "My car broke down, would you mind calling a tow truck for me?" Insofar as speech of such content is excluded from the permit and disclosure requirements, then the ordinance is content based. And if, absurdly, such speech *is* included, then the ordinance is intolerably burdensome to speech.

syth County v. *Nationalist Movement*, 505 U.S. 123 (1992), *Clark* v. *Community for Creative Non-Violence*, 468 U.S. 288 (1984), and *United States* v. *O'Brien*, 391 U.S. 367 (1968)). The court of appeals then concluded that the ordinance was "content neutral and of general applicability, and hence, subject to intermediate scrutiny" because there was "no indication that the *ordinance* distinguishes between favored and disfavored speech; it requires all individuals seeking to canvass to register irrespective of the content of their message." *Watchtower*, 240 F.3d at 561 (citations omitted).

Even assuming – doubtfully – that such reasoning is valid as applied to the permit requirement in general and the "No Soliciting" option given to residents, it simply has no application to the further *disclosure* requirement at issue here, which is a direct content-based restriction on pure speech unrelated to commercial transactions or other non-speech conduct. The disclosure requirement thus must be receive strict scrutiny.

II. The Alleged Interests in this Case Do Not Justify Restricting Anonymous Speech.

Against the significant First Amendment protection for anonymous speech, the Village asserted, and the Sixth Circuit accepted, not a direct interest in preventing harm from anonymity *per se*, but rather an indirect interest in aiding the enforcement of other direct prohibitions against fraud and undue annoyance. The court of appeals acknowledged that other provisions of law provide criminal and civil penalties for improper conduct and allow residents to indicate a desire not to be solicited by registering and posting such desire. *Watchtower*, 240 F.3d at 566 & n. 9. The Sixth Circuit determined, however, that the disclosure requirement indirectly furthered the enforcement of such direct provisions by "requiring identification from the canvasser prior to canvassing so that if he does ignore the wishes of the residents, the Village has information that will assist it in prosecuting the canvasser, thereby adding to the likelihood that a canvasser will be deterred from

canvassing such residents." *Id.* at 566 n. 9; *see also id.* at 566 ("The ordinance's registration requirements also likely deter Jehovah's Witnesses from canvassing homes with No Solicitation Signs and forms because they are aware that the Village now has information – name, address, organization or cause – helpful in apprehending someone who ignores a resident's wishes."); *id.* at 567 (ordinance deters "individuals from committing fraud because they know the Village has information that would make it easier to apprehend them were they to do so").

The court also suggested that disclosure aids in determining, at the initial permitting stage, "whether canvassers are in fact affiliated with an organization such as Jehovah's Witnesses or are instead perpetrators of fraud using a Jehovah's Witnesses claim as cover," by providing "the Village with information helpful in making this assessment" and thus the ability "to turn away perpetrators posing as Jehovah's Witnesses." *Id.* at 566-67.

Those asserted interests, however, are indistinguishable from the interests rejected by this Court in prior cases on anonymity, and cannot sustain the Village's sweeping disclosure requirement. In *Talley*, for example, the Los Angeles disclosure requirement was defended as "providing a way to identify those responsible for fraud, false advertising and libel." 362 U.S. at 64; see also *id.* at 66 (Harlan, J., concurring) (law claimed to "aid in the detection of those responsible for spreading" unlawful material). But this Court rejected that defense as inadequate because the law at issue applied to large quantities of lawful speech and was not limited to the unlawful speech that was the underlying concern. *Talley*, 362 U.S. at 64. As Justice Harlan explained in his concurrence,

> it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character. In the absence of a more substantial showing as to Los Angeles' actual experience

> with the distribution of obnoxious handbills, such a generality is for me too remote to furnish a constitutionally acceptable justification for the deterrent effect on free speech which this all-embracing ordinance is likely to have.

362 U.S. at 66-67 (footnote omitted).

Similarly in *McIntyre*, this Court rejected a sweeping disclosure requirement, holding that to the extent Ohio sought to defend the requirement "as a means to prevent the dissemination of untruths, its defense must fail for the same reason given in *Talley*" because "the ordinance plainly applies even when there is no hint of falsity or libel." 514 U.S. at 344. Such a "blunderbuss approach" to preventing the misuse of anonymous speech by prohibiting all uses of a general category of anonymous speech was found unacceptable under the First Amendment. *Id.* at 357. While government "may, and does, punish fraud directly," it "cannot seek to punish fraud indirectly by indiscriminately outlawing a category of speech, based on its content, with no necessary relationship to the danger sought to be prevented." *Id.*

As in *McIntyre*, the disclosure requirement here merely "serves as an aid to enforcement of the specific prohibitions and as a deterrent to the making of false statements by unscrupulous prevaricators." 514 U.S. at 350-51. While that may be a legitimate interest in general, it is insufficient to overcome the First Amendment burden created by a law broadly restricting entirely lawful and protected anonymous speech.

Furthermore, the Sixth Circuit too casually assumed that the Village's disclosure requirement would actually have a material effect on a genuine problem. In a significant understatement of the matter, the court recognized that evidence for the supposed problem with fraud and undue annoyance – prior to enactment of the unchallenged stricter penalties in the Village ordinance – was "by no means overwhelming." 240

F.3d at 566. It then merely asserted that the disclosure requirement would be effective in deterring and enforcing against fraudulent and unduly annoying solicitation. *Id.* at 566-67. But as this Court recognized in *McIntyre*, anonymity "does not necessarily protect" a wrongdoer "from being held responsible" for illegal conduct. 514 U.S. at 352. And given that a person contemplating illegal conduct is more apt than legitimate speakers simply to falsify the information disclosed for the permit, the deterrent and enforcement value as to such wrongdoers is doubtful. Neither the Village nor the Sixth Circuit has explained why it would be more difficult to enforce its substantive prohibitions against anonymous speakers "than against wrongdoers who might use false names and addresses in an attempt to avoid detection." *Id.* at 353.[9]

Perhaps recognizing the inadequate weight of the interests asserted in support of the disclosure requirement, when the Sixth Circuit briefly addressed *McIntyre* itself, it sought to downplay the constitutional burden imposed by the disclosure requirement by arguing that because canvassers already "reveal a portion of their identities – their physical identities – to the residents they canvass," the further disclosure of their names does not "rise[] to the level of impinging on First Amendment protected speech the Court [in *McIntyre*] sought to protect." *Watchtower*, 240 F.3d at 563. The court of appeals' purported distinction of the right protected in *McIntyre*, however, is curious given that name-anonymity was *precisely* the right endorsed in *McIntyre* in the exact circumstances where she had chosen to disclose only her physical identity by

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[9] Indeed, if canvassers are indeed out canvassing a neighborhood and improperly ignore a "No Soliciting" sign, a simple phone call could alert police in ample time to intercept them as they continued on their path. And if they commit fraud by misrepresenting matters to the persons being solicited, they are just as likely to misrepresent the information required to be disclosed. In the end, disclosure is a far greater burden to honest canvassers for unpopular causes who disclose accurate information than it is to frauds with no such scruples.

distributing "leaflets to persons attending a public meeting." 514 U.S. at 337. It is likewise precisely the right protected in *Buckley* v. *ACLF* in the context of petition circulators engaged in interactive speech on a one-to-one basis with members of the public. 525 U.S. at 199. Indeed, forbidding anonymity in the context of the "less fleeting encounter[s]" in *Buckley* and in this case is a restraint on speech "more severe than was the restraint in *McIntyre*." *Id.* at 199. And as discussed above, *supra* at 6-8, name-anonymity raises unique concerns that are not diminished by a speaker's willingness to disclose his physical appearance through direct interaction. The Sixth Circuit's distinction thus wholly lacks merit.

The Sixth Circuit's further attempt to distinguish *McIntyre* based on the supposed application of intermediate scrutiny is equally unavailing. As noted above, *supra* at 12-14, while intermediate scrutiny might arguably be appropriate for a number of the requirements enacted by the Village, it has no application to the disclosure requirement at issue here. Furthermore, given the speculative harms alleged, the tenuous connection between those harms and the disclosure requirement, and the significant burden on protected anonymous speech, the disclosure requirement would fail constitutional muster even under intermediate scrutiny.

Door-to-door canvassing "is one of the most accepted techniques" of engaging in core First Amendment speech." *Martin* v. *City of Struthers*, 319 U.S. 141, 146 (1943). It is a traditional means of communication of all sorts of ideas and views, and "is essential to the poorly financed causes of little people." *Id.* Where such causes are unpopular, however, canvassers may sensibly choose to keep their personal identities anonymous in order to avoid the lingering consequences of harassment and retaliation that such causes are apt to breed. Having the choice to remain personally anonymous thus allows for the exercise of the freedom of speech and that choice may not be deprived through government edict. The Sixth Circuit ignored that basic constitutional principle and

thus did a disservice to individual freedom for the sake of speculative gains in law enforcement efficiency regarding a problem not even remotely evident in this case. The Constitution requires far more before allowing government to tread on First Amendment rights.

CONCLUSION

For the foregoing reasons, the decision of United States Court of Appeals for the Sixth Circuit should be reversed.

Respectfully Submitted,

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Dated: November 29, 2001.

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IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MOTION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONERS AND BRIEF *AMICUS CURIAE*

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

The Church of Jesus Christ of Latter-day Saints ("the Church") hereby moves, pursuant to Rule 37.2(b), for leave to file a brief *amicus curiae* in support of petitioners. *Amicus* is filing this motion because Respondents have withheld their consent.* A copy of the proposed brief is attached.

As more fully explained at page 1 of the attached brief under "Interest of the *Amicus Curiae*", the Church conducts perhaps the largest, full-time missionary program in the United States. The decision of the Court regarding the constitutionality of the solicitation ordinance at issue in this case will significantly impact the Church's missionary work. Church missionaries are routinely burdened by similar ordinances as they attempt to share their religious message through door-to-door proselyting.

The Church believes that its brief will assist this Court in adjudicating the question on which *certiorari* was granted because it is uniquely positioned to inform the Court about (1) the practical impact on religious speech of municipal ordinances limiting religious solicitation; (2) similar ordinances across the nation that impose onerous and arbitrary burdens on religious speech; and (3) the need to clarify certain aspects of First Amendment law that government officials consistently invoke to justify laws that unconstitutionally burden religious proselyting.

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* In response to a request for consent to file an *amicus curiae* brief, counsel for Respondents replied by letter dated November 26, 2001 that the Church should make application to the Court for leave to file such a brief. Petitioners' letter of consent is on file with the Clerk of the Court.

Accordingly, the Church respectfully requests that the Court grant leave to file the attached brief *amicus curiae*.

Respectfully submitted,

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International Society for Krishna Consciousness, Inc. v. Conlisk, 374 F. Supp. 1010 (N.D. Ill. 1973) 10

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INTEREST OF THE *AMICUS CURIAE*

The Church of Jesus Christ of Latter-day Saints is a worldwide religious association with more than eleven million members.[1] More than five million of those members live in the United States. The doctrine of the Church enjoins its members to share the gospel of Jesus Christ with the world. To that end, the Church operates perhaps the largest full-time program of religious proselyting in the nation. In the United States alone, over 17,000 full-time missionaries serve in more than one hundred missions covering every state in the Union. These dedicated men and women — the vast majority between the ages of nineteen and twenty-five — make tremendous personal sacrifices to share their faith. Leaving behind their homes, families, and educational pursuits for up to two years, and at their own expense, Church missionaries work long hours each day teaching others about the Church's beliefs. Much of this occurs in the context of door-to-door proselyting.

As a result, the Church has extensive experience with local laws, such as the one at issue here, that restrict religious evangelism. Church missionaries have encountered such laws numerous times, especially in recent years. The Court's decision in this case will potentially have far-reaching impacts on the Church's missionary program.

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1. Pursuant to Supreme Court Rule 37.6, counsel for *amicus* state that they authored this brief in whole, and that no person or entity, other than *amicus*, made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The right to express religious beliefs to others is fundamental to the American tradition of liberty. Under the First Amendment, religious expression enjoys the highest constitutional protections. Accordingly, this Court has long afforded vigorous protections to the right to engage in religious proselyting, including the venerable practice of door-to-door evangelism. While government may impose appropriate time, place, and manner restrictions on proselyting, this Court's decisions make clear that such restrictions must withstand exacting judicial scrutiny to ensure that they do not unduly burden or limit religious expression.

As mandated by its doctrine and out of concern for the spiritual welfare of all people, The Church of Jesus Christ of Latter-day Saints conducts a vast missionary program with tens of thousands of missionaries and hundreds of missions. The purpose of this work is literally to share the restored gospel of Jesus Christ with all the world. One of the principal means the Church uses to accomplish this end is door-to-door contacting by dedicated missionaries. Missionaries are assigned to geographically defined missions for the duration of their service. Within a mission, missionaries work in pairs in assigned areas, as directed by Church authorities. Such assignments often change according to the spiritual needs of the mission, allowing a missionary to evangelize in many different locales and with many different companions over a period of eighteen to twenty-four months. Consequently, in order for the Church to carry out its religious mission, it is critical that missionaries be able to proselyte in many different municipalities, as directed by ecclesiastical leaders or divine guidance, without first having to comply with burdensome regulations that impose prior restraints on religious expression.

For many years, the Church experienced few attempts by municipalities to restrict the door-to-door evangelism of its missionaries. This Court's religious solicitation cases were widely understood to provide broad protections against regulations limiting proselyting. However, the last decade has witnessed a dramatic surge in the number and severity of anti-solicitation laws that are being applied to religious proselyting. Many of these laws contain onerous registration requirements that are nothing more than prior restraints on speech, imposing lengthy waiting periods and severely limiting the hours when religious contacting can occur, often excluding Sundays, holidays, and times when people are generally home from work. Because of such laws, a number of which are reviewed in greater detail below, the Church's missionary efforts have frequently and increasingly been hindered.

In interacting with officials from many municipalities, the Church has learned that a pervasive misunderstanding exists as to whether the rule announced in *Employment Division v. Smith*, 494 U.S. 872 (1990) — that the Free Exercise Clause does not require strict scrutiny of neutral laws of general application that incidentally burden religious excercise — applies in cases involving religious speech. Many municipal officials think that *Smith* essentially eliminated First Amendment protections for religious proselyting, despite the fact that *Smith* itself reaffirmed the strong First Amendment protections announced in the Court's religious solicitation cases. A number of lower courts have engaged in their own variation of this mistaken application. The result is that municipal officials increasingly believe there are few if any constraints on their ability to severely limit door-to-door evangelism in their jurisdictions. This case presents an excellent opportunity for the Court to end this confusion and clarify that the deferential rule in *Smith* has no application in cases involving religious expression.

ARGUMENT

I. THE FREE SPEECH CLAUSE PROTECTS THE RIGHT OF RELIGIOUS EXPRESSION, INCLUDING RELIGIOUS PROSELYTING.

No right is more fundamental — nor dearer to the heart of the believer — than the right to express oneself on matters of religion. Religious expression, be it speech or some other form, is inextricably bound up with religious exercise and belief. Each week, in tens of thousands of churches, synagogues, mosques, and other places of worship, Americans offer prayers, read holy texts, expound religious doctrines, discuss the great questions of life, and share and reaffirm sacred experiences and narratives. Perhaps in most religions, and certainly in the monotheistic faiths that are most prominent in the United States, the word of God is a core focus of religious life. It is preached, explicated, shared, discussed, debated, ritualized, dramatized, sung, and chanted. Religious expression takes many other forms, even silence. Because religion addresses intractable and inescapable questions – including the nature of good and evil, and the meaning of life, death, and suffering — the need to express oneself on religious topics (even if only to dismiss them) is deeply embedded in the human conscience.

For many religions, knowledge of God or the truth entails a solemn obligation to share that knowledge with others. Religious expression serves not only to deepen and enrich the faith of the converted, but also as a means of bringing new adherents into the fold. In the Christian tradition, for instance, the Great Commission enjoins believers to take to all the world the good news that salvation is through Jesus Christ. *Matthew* 28:19; *Mark* 16:15. Evangelism has always

been a constant and defining feature of Christianity and what it means to be a Christian. So weighty has been the injunction to spread the gospel that thousands have risked and ultimately given their lives to carry it out. Tens of thousands more have been persecuted and suffered great hardships while preaching Christianity. Faithful adherents of many other religious traditions have made (and are now making) the same types of personal sacrifices as they share their beliefs with others. The imperative to share religious beliefs has been one of the most powerful, undeniable, and consequential forces in human history, and it remains so. Denial of the right to freely engage in religious expression is a hallmark of tyranny that tends to have revolutionary consequences, as this nation's own founding and many other conflicts attest.

Freedom of religious expression is as core to the First Amendment as political speech, and thus is afforded the highest constitutional protections. More than sixty years ago, in striking down specific constraints on religious expression, this Court concluded: "The fundamental law declares the interest of the United States that the free exercise of religion be not prohibited and that freedom to communicate information and opinion be not abridged." *Cantwell v. Connecticut*, 310 U.S. 296, 307 (1940). It is axiomatic that "religious worship and discussion" are "forms of speech and association protected by the First Amendment." *Widmar v. Vincent*, 454 U.S. 263, 269 (1981). Accordingly, this Court's "precedent establishes that private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression." *Capitol Square Review and Advisory Board v. Pinette*, 515 U.S. 753, 760 (1995) (plurality opinion) (citing *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384 (1993); *Board of Ed. of Westside Community Schools*

(Dist. 66) v. Mergens, 496 U.S. 226 (1990); *Widmar, supra*, 454 U.S. 263; *Heffron v. International Soc. for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981)). "Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed *precisely* at religious speech that a free-speech clause without religion would be Hamlet without the prince." *Pinette*, 515 U.S. at 760 (emphasis in original). Perhaps for that very reason "religious speech [is not] simply *as* protected by the Constitution as other forms of private speech" *Id.* at 767 (emphasis in original). "[P]rivate religious expression receives *preferential* treatment" under the First Amendment. *Id.* (emphasis in original).

The First Amendment protects more than just religious expression that occurs within the confines of homes, churches, synagogues, or other sanctuaries. It also protects religious expression in far more public settings, such as traditional public forums, *Pinette*, 515 U.S. 753, university facilities generally open for use by student groups, *Widmar*, 454 U.S. 268-71, school facilities open after hours, *Lamb's Chapel*, 508 U.S. 393-97, and to some extent even nonpublic forums such as airports, *Lee v. International Society for Krishna Consciousness*, 505 U.S. 830 (1992) (invalidating ban on distribution of religious literature in airport).

Of particular relevance here, the Court has long afforded generous First Amendment protections to religious evangelism, including leafleting and door-to-door proselyting. In *Lovell v. City of Griffin*, 303 U.S. 444 (1938), a woman was sentenced to imprisonment for fifty days for distributing religious tracts without prior city approval. This Court invalidated the ordinance, holding that the First Amendment protects the "essential liberty" to publish *and*

distribute "every sort of publication" — including religious publications — "which affords a vehicle of information and opinion." *Id.* at 452.

Similarly, in *Cantwell* this Court struck down a Connecticut law banning solicitation of money for religious causes without prior governmental approval. Applying strict judicial scrutiny, the Court held that the statute was not "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State." 310 U.S. at 311. The state's licensing scheme for "the solicitation of aid for the perpetuation of religious views or systems" placed "a forbidden burden upon the exercise of liberty protected by the Constitution." *Id.* at 307.

Likewise, in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943), several Jehovah's Witnesses brought a First Amendment challenge to an ordinance that made it a crime to distribute religious literature or solicit people to purchase religious books and pamphlets without a license. *Id.* at 106-07. Voiding the ordinance, this Court held "that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as more orthodox types." *Id.* at 110. This Court equated the right to engage in proselyting with the fundamental right to worship in a church or preach a sermon: "This form of religious activity occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits. . . . It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press." *Id.* at 109.

It is noteworthy that this Court in *Murdock* flatly rejected any suggestion that the general applicability of a law constraining religious proselyting suffices to satisfy the First Amendment. "The fact that the ordinance is 'nondiscriminatory' is immaterial," this Court held. *Id.* at 115. A statute "does not acquire constitutional validity because it classifies the privileges protected by the First Amendment with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance." *Id.* That is because "[t]he constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protections afforded commercial handbills." *Id.* at 111. In brief, "[f]reedom of press, freedom of speech, freedom of religion are in a preferred position." *Id.* at 115.

This Court reached the same conclusion in *Martin v. City of Struthers*, 319 U.S. 141 (1943), where a door to door evangelist was convicted of violating an ordinance prohibiting the distribution of " 'handbills, circulars or other advertisements.' " *Id.* at 142. This Court acknowledged that the dissemination of "novel and unconventional ideas might disturb the complacent" or create a "minor nuisance." *Id.* at 143. Nevertheless, the First Amendment protects the venerable practice of distributing literature, including religious literature, door to door:

> While door to door distributers of literature may be either a nuisance or a blind for criminal activities, they may also be useful members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion. The widespread

> use of this method of communication by many groups espousing various causes attests its major importance. . . . Many of our most widely established religious organizations have used this method of disseminating their doctrines. . . .

Id. at 145. Invalidating the ordinance, this Court held that the "[f]reedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be fully preserved." *Id.* at 146-47.

In addition to protecting the rights of the religious speaker, these decisions also protect the rights of the prospective listener. They reflect the deeply rooted liberty of Americans to decide for themselves, free from governmental constraint, whether to entertain a person who has come to their door seeking to share a message.

> For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community.

Id. at 143; *see also id.* at 148 ("[W]hether distributers of literature may lawfully call at a home" properly "belongs . . . with the homeowner himself," not the government.).

Because the "dangers of distribution [of literature] can so easily be controlled by traditional legal methods" (such as the law of trespass) which allow "each householder the full right to decide whether he will receive strangers as visitors," stringent prohibitions on door-to-door distribution of literature "can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas." *Id.* at 147.

These and many other federal court decisions have firmly established that the First Amendment protects religious expression, including the right of proselyters to go door to door distributing religious literature and providing a religious message.[2] If homeowners do not wish to receive the message offered, they have every right to ask the person to leave, or even to post a sign informing proselyters that they do not wish to be disturbed in the first place. That is clearly the homeowner's choice, and the law can justly punish the proselyter who fails to respect it. The First Amendment, however, denies the government the authority to make that choice for the homeowner, thereby precluding the homeowner from hearing what may be a desired religious message and

2. *See, e.g., Follett v. Town of McCormick*, 321 U.S. 573, 578 (1944) (evangelist distributing books cannot "be required to pay a tax for the exercise of that which the First Amendment has made a high constitutional privilege"); *Schneider v. New Jersey*, 308 U.S. 147, 162 (1939); *Petersen v. Talisman Sugar Corporation*, 478 F.2d 73, 83 (5th Cir. 1973); *Holy Spirit Ass'n for the Unification of World Christianity v. Hodge*, 582 F. Supp. 592, 604 (N.D. Texas, 1984); *Conlon v. City of North Kansas City*, 530 F. Supp. 985, 989-90 (W.D. Missouri 1981); *Erskine v. West Palm Beach*, 473 F. Supp. 48, 50-51 (S.D. Fla. 1979); *Weissman v. City of Alamogordo*, 472 F. Supp. 425, 429-31 (D.N.M. 1979); *Love v. Mayor, City of Cheyenne*, 448 F. Supp. 128, 133 (D. Wyo. 1978); *International Society for Krishna Consciousness, Inc. v. Conlisk*, 374 F. Supp. 1010 (N.D. Ill. 1973).

preempting the believer from expressing his religious views. Mitigating whatever minor inconveniences or risks arguably might arise because of door-to-door proselyting is not a sufficient justification for prior restraint of religious speech.

II. THE DOCTRINE OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS OBLIGATES EVERY MEMBER OF THE CHURCH TO PARTICIPATE IN MISSIONARY WORK.

No church values the First Amendment right to proselyte more than The Church of Jesus Christ of Latter-day Saints. The most fundamental doctrine of the Church is that Jesus is the Christ, the Savior of the world, and that only by and through Him can mankind be saved. The Church also teaches that all persons are children of a loving God, and thus are part of a spiritual family. The confluence of these two doctrines gives impetus to the fundamental purpose of the Church: to bring souls to Christ. Latter-day Saints believe that they are under a solemn obligation — a duty born of love and covenants with God — to share the saving truths of the gospel of Jesus Christ with every one of their spiritual brothers and sisters. Thus, a principal and defining mission of the Church is literally to preach the gospel to every person on the earth.

These beliefs are rooted in the teachings of biblical Christianity. The Bible teaches that at the end of his earthly ministry, the Lord Jesus Christ commanded his disciples, "Go ye therefore, and teach all nations." *Matthew* 28:19 (King James). The Gospel of Mark reports this as a command to go "into all the world, and preach the Gospel to every creature," and promises that "[h]e that believeth and is baptized shall be saved; but he that believeth not shall be damned."

Mark 16:15-16. To Latter-day Saints, "this Great Commission is obligatory. . . . It imposes a sacred duty to witness 'among all nations, kindreds, tongues, and people' (*Doctrine and Covenants* 112:1)." Dallin H. Oaks & Lance B. Wickman, *The Missionary Work of The Church of Jesus Christ of Latter-day Saints*, *in* SHARING THE BOOK: RELIGIOUS PERSPECTIVES ON THE RIGHTS AND WRONGS OF PROSELYTISM 247, 248 (John Witte Jr. & Richard C. Martin, eds., 1999).[3]

Church doctrine holds that these ancient biblical injunctions have been reaffirmed in latter times through modern revelation.

> One of the Church's teachings is that those who are desirous to come into the fold of God have the duty "to stand as witnesses of God at all times, and in all things, and in all places that ye may be in, even until death" (Book of Mormon, *Mosiah* 18:9).

Id. at 249. Missionary work is therefore a defining attribute of a Latter-day Saint:

> For Latter-day Saints, who believe that God has restored vital additional knowledge and power to bless the lives of all his children and who believe that they have a duty to share these

3. Dallin H. Oaks is a member of the Quorum of the Twelve Apostles of The Church of Jesus Christ of Latter-day Saints, the second highest governing body in the Church. Lance B. Wickman is a member of the First Quorum of the Seventy, another of the Church's governing bodies. The *Doctrine and Covenants* is a book of Church scripture containing modern revelation.

> treasures with all humankind, the command to witness is fundamental to all their belief and practice. It is a vital part of what it means to be a Latter-day Saint. *To all who hold these convictions, the duty to witness and to share is a fundamental matter of conscience.*

Id. at 250 (emphasis added).

To carry out the Great Commission, young men and women of the Church (usually between the ages of nineteen and twenty-five) are encouraged to serve as unpaid missionaries for eighteen to twenty-four months. Retired adult couples and singles may also serve. These dedicated individuals are "more than volunteers"; under Church doctrine, they are "called to service by a prophet [the president of the Church], and the place and duration of their labors [are] given to them by that same authority." *Id.* at 253. Typically paying their own way, they devote themselves full time to sharing the gospel of Jesus Christ, completely abstaining from such things as dating, movies, and even popular music. *Id.* at 263-64. In the United States, the Church currently has 17,239 full-time missionaries serving in over one hundred missions.[4]

As in biblical times, going two-by-two, door to door, is one important way to spread the gospel. When someone expresses interest in learning more, the missionaries meet with him or her for a series of discussions to present the basic doctrines of the Church. This door-to-door evangelism is a vital aspect of the Church's missionary program, with Church missionaries in their dark suits and white shirts an easily identifiable symbol of the Church throughout the world.

4. Worldwide, the Church has over 60,000 missionaries serving in 333 missions.

To understand the impact of restrictive ordinances on the Church's missionary program, it is important to understand the basic organization and operation of missionary work. Missionaries are assigned to specific geographical regions known as "missions" and are supervised by a mission president who provides spiritual and temporal direction for their actions. Each missionary is in turn assigned to a specific area within the mission as well as to a specific companion with whom he or she will live and work for a time. Periodically, the mission president will transfer a missionary to a new locale or assign him or her a new companion.

Sometimes a missionary's area of service is a single large city; other times a missionary is assigned to proselyte in several small towns. A missionary will serve with a particular companion anywhere from a few weeks to many months. From time to time missionaries trade companions for a day or two so that more senior missionaries can provide training, or to allow a particular missionary with special skills or insight to teach a particular potential convert, or sometimes just for a change of pace. Thus, the freedom of missionaries to preach and teach without first having to comply with municipal registration or permit schemes in each new town or borough they enter is vital to the Church's missionary program. Given how often missionaries move around, and the fact that missions often encompass scores of municipalities, such schemes can be extremely disruptive to the Church's missionary work, tying up its missionaries in bureaucratic red tape in town after town when they should be free to preach the gospel. Moreover, missionaries are taught to go where they are led by the Holy Spirit. The prior restraint these laws impose on religious expression often prevents missionaries from following a spiritual prompting to proselyte door to door on a particular day in a particular town.

In short, Church missionaries are ministers of the gospel who, in fulfillment of the Great Commission and at great personal sacrifice, are engaged in religious expression that is entitled to the highest degree of protection under the First Amendment. These missionaries are not mere "hucksters and peddlers" of "wares and merchandise," 319 U.S. at 115, and under the First Amendment, municipalities cannot licence and regulate them as if they were. Yet, as seen next, increasing numbers of cities and towns have enacted ordinances that attempt to do just that.

III. MUNICIPALITIES ARE INCREASINGLY REGULATING DOOR-TO-DOOR PROSELYTING, OFTEN IN WAYS THAT PLACE SIGNIFICANT BURDENS ON RELIGIOUS EXPRESSION.

The Church has absolutely no objection to appropriate time, place, and manner restrictions on religious proselyting. The Church has never maintained that its missionaries have the right to make nuisances of themselves while preaching the gospel, or otherwise to ignore fair restrictions adopted by local government to protect its citizenry. Indeed, to disregard these reasonable restrictions is to act contrary to Church teachings. Missionaries are taught to show respect for the laws, customs, and sensibilities of those they seek to teach, including leaving the premises promptly at the request of a homeowner. The Church's doctrine of respect for moral agency, as well as common human decency, require no less.

However, time, place, and manner restrictions can go too far. They can be used to create a tangled web of ostensibly innocuous requirements that individually or collectively make vital forms of religious expression practically impossible. The Constitution forbids government from using

time, place, and manner restrictions as a surreptitious means of suppressing expression. Time, place, and manner restrictions pass First Amendment muster only when they "are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication." *United States v. Grace*, 461 U.S. 171, 177 (1983) (citation and quotation marks omitted).

In the last decade, the Church has witnessed a substantial increase in both the number of laws regulating proselyting and in the burden such laws impose on religious expression. Municipal officials in particular frequently conclude that so long as an ordinance is neutral and generally applicable with respect to all those going door to door, government may regulate the bearers of religious messages in the same way it regulates "hucksters and peddlers." Accordingly, many municipalities are imposing burdensome registration schemes and fees on proselyters, as well as limiting door-to-door contacting to hours that often preclude effective evangelism. Church missionaries are frequently and increasingly hindered by such constraints. A few of many possible examples illustrate the problem.

Mundelein, Illinois. In the Village of Mundelein, Illinois (a suburb of Chicago), Ordinance 93-4-14, which has been interpreted to apply to Church missionaries, requires that a proselyter submit an application to engage in door-to-door ministry. This application must be submitted thirty days in advance of the intended proselyting, and it must be accompanied by a $10 processing fee. Among other information, the application — made "under oath" — must contain a "statement of the purpose of the applicant"; the "most recent financial statement of the applicant, indicating

the disbursement of the gross and net proceeds of its solicitations"; and the "period of time and area of solicitation within the Village of Mundelein, which shall be not more than seven (7) days (including one weekend) in any year." Village of Mundelein, Ordinance 93-4-14, § 6.A. The application must also include the "[n]ame, present residence address, telephone number, social security number, and driver's license number" of each applicant; the address of his or her past residences during the last three years; two photographs taken in the last sixty days; and the names and addresses of at least two references "in Illinois who can give accurate information as to the applicant's reputation for moral character, honesty, and integrity." *Id.*

If the Village decides to approve the permit application, it issues the missionary what is essentially a license to preach, consisting of "a certificate of registration bearing his name, address, and dates covered by such registration." *Id.* § 7.D. The registration card contains a photo of the applicant. *Id.* However, as noted, the permit is valid for "not more than seven (7) days (including one weekend)." *Id.* § 7.B. And even for missionaries with the necessary government papers, door-to-door proselyting can occur only between the hours of 9:00 a.m. and 8:00 p.m. or sunset, whichever comes first, with two exceptions. On Sundays, the hours are further restricted to the time period of noon to 6:00 p.m. or sunset, whichever comes first. On national holidays, when Americans celebrate the blessings of living in a free land, religious proselyting is totally forbidden. *Id.* § 15.

Watervliet, New York. The City of Watervliet, New York has a solicitation ordinance that applies to door-to-door evangelism. It requires that missionaries apply for a license to proselyte that is valid for only two-months, at which time it must be renewed. The license is not transferable and thus cannot be used by a fellow missionary in town just for the day.

Missionaries must give prior notice to the police department of the location in which proselyting will occur. The "hours of operation" are limited to Monday through Friday, 9:00 a.m. to 7:00 p.m. Religious contacting on Saturdays and Sundays is prohibited.

Dover, New Jersey. Church missionaries in the Town of Dover, New Jersey have been required to obtain a "solicitor permit" before engaging in door-to-door proselyting. *See* Dover Code § 273-1. Obtaining such a license costs $25 and can take up to ten days after filling out and submitting a detailed application, complete with fingerprints. *Id.* § 273-3, -4, -6. The license is not transferable from one missionary to another, it must be carried while proselyting, and contacting is permitted only between the hours of 10:00 a.m. and 5:00 p.m., when most people are away at work, except on Sundays or holidays, when contacting is banned entirely unless specially authorized by the Mayor and Board of Aldermen. *Id.* § 273-7.[5]

Round Lake Beach, Illinois. Police in the Village of Round Lake Beach, Illinois have informed Church missionaries that under the Village's code (Title III, Chapter 6, § 3-6.13-1 *et seq.*) they need a permit to conduct door-to-door evangelism. As part of the application for the permit, the missionary applicant must provide information on fifteen different topics, including all addresses and employers during the last three years and "[a]ny additional information as deemed necessary by the chief of police or his representative. . . ." *Id.* § 3-6.13-12. The fee for processing each application is $25. The permit must be renewed every ninety days.

5. The code provides that a religious organization can apply for a special permit to solicit donations or to distribute literature for which a fee is charged, but other than waiver of the $25 license fee, there appears to be no substantive advantage to a special permit. *Id.* § 273-9.

The above ordinances are examples of a much larger problem. In the Church's experience, these are not isolated incidents; rather, they are representative of a pattern which is developing across the country in which numerous other municipalities are seeking to severely curtail all forms of door-to-door contacting, including religious proselyting.[6] Extremely burdensome regulations — ranging from lengthy advance notice requirements, to costly and time-consuming application procedures, to strict time-of-day and day-of-week limitations on when proselyting may occur — all substantially infringe on the sacred duty of Church missionaries to contact residents door to door and invite them to listen to the Church's religious message. These restrictions treat those who wish to engage in pure religious expression — expression which is entitled to "*preferential* treatment" under the First Amendment, *Pinette*, 515 U.S. at 767 (plurality opinion) (emphasis in original) — no better than the door-to-door salesman of vacuums and brushes, no better than the solicitor seeking to sell household cleaning supplies, and no better than the traveling peddler of trinkets and baubles.

6. In conversations with Church counsel, Church mission presidents report encountering such ordinances on scores of occasions. For example, just in the mission covering upstate New York, there are twelve different restrictive door-to-door ordinances currently being enforced against Church missionaries.

IV. SIGNIFICANT CONFUSION EXISTS IN THE LOWER COURTS AND AMONG MUNICIPAL LAWMAKERS REGARDING THE SCOPE OF *EMPLOYMENT DIVISION v. SMITH*; THE COURT SHOULD CLARIFY THAT THE RULE ANNOUNCED IN *SMITH* HAS NO BEARING IN CASES INVOLVING FREEDOM OF EXPRESSION, INCLUDING RELIGIOUS EXPRESSION.

For many decades, this Court's decisions in cases like *Lovell*, *Cantwell*, and *Murdock* seemed to have settled the issue of whether a municipality could constitutionally ban or severely restrict religious proselyting. In the past, at least in the Church's experience, cities and towns generally had few if any restrictions on evangelism; or if they did, such restrictions were generally not enforced.

However, in the last decade things have changed dramatically. Since this Court's decision in *Employment Division v. Smith*, 494 U.S. 872 (1990), municipalities have been emboldened to impose ever-more onerous restrictions on proselyting. Many municipal officials now believe that *Smith* essentially overruled, or at least drastically curtailed, this Court's earlier religious solicitation cases and replaced them with the blanket rule that the First Amendment does not shield religious expression from "generally applicable" or "neutral" regulations. This misreading of *Smith* is, to say the least, baffling given the express limitations in the decision itself. But it is nonetheless pervasive, especially at the local level.

This Court in *Smith* held that the Free Exercise Clause standing alone does not require strict scrutiny of religiously neutral laws of general application that have the incidental

effect of burdening religious exercise. *Id.* at 880-85. But this holding provides absolutely no support for the now-prevalent misconception that municipalities can bar or severely limit religious proselyting by a generally applicable or neutral ordinance banning or severely restricting all types of soliciting. Indeed, this Court's analysis in *Smith* is precisely to the contrary. That analysis specifically singled out the religious solicitation cases discussed above as examples of where "the First Amendment bars application of a neutral, generally applicable law to religiously motivated action . . . ." *Id.* at 881. This Court explained that in such cases free exercise norms "in conjunction with other constitutional protections, such as freedom of speech and of the press," combined to protect the religious activity from government suppression. *Id.* The holding in *Smith* itself was limited to an entirely different set of facts which did "not present such a hybrid situation, but a free exercise claim unconnected with any communicative activity. . . ." *Id.* at 882. *Smith*'s own limitation on its "generally applicable and neutral" analysis could not have been more clear: when "communicative activity" is involved, like the religious expression in the *Lovell-Cantwell-Murdock* line of cases, *Smith*'s relaxed standard of judicial review simply does not apply. *Id.*

It follows that any reliance on the rule in *Smith* to uphold municipal ordinances of the sort described above is plainly erroneous. Unfortunately, this misreading of *Smith* has nevertheless become widespread. Municipalities now routinely invoke *Smith*'s general applicability rule in response to any suggestion that a restriction involving a church might violate First Amendment freedoms. Under this increasingly common misconception, the rule in *Smith* has not only swallowed all of free exercise jurisprudence (a gross over reading in itself), it also threatens to consume much of free speech and free press law, at least where religious expression is involved.

For their part, the lower courts have often adopted their own variations on this mistaken reading of *Smith*. The court below, for instance, labeled as mere dicta this Court's own articulation of the limitations of the *Smith* rule on religiously motivated conduct when the constitutionally protected areas of speech or press are also in play. 240 F.3d at 561 ("That language was dicta and therefore not binding."). Other lower courts have expressed similar views, adopting in full force *Smith*'s relaxed form of judicial scrutiny, while ignoring or minimizing the analysis contained in *Smith* on the limited application of that relaxed form of scrutiny.[7]

This case presents the Court with an excellent opportunity to eliminate the confusion that exists over the

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7. *See, e.g., New York State Employment Relations Board v. Christ the King Regional High* School, 90 N.Y.2d 244, 249, 682 N.E.2d 960, 964, 660 N.Y.S.2d 359, 363 (1997) ("as we analyze the matter, the Supreme Court in *Smith* did not intend its hybrid exception to turn back on itself in circumstances such as this singularly generic First Amendment setting and circumstance"); *McCready v. Hoffius*, 459 Mich. 1235, 593 N.W.2d 545 (1999) ("However, there is a clear split in the circuits regarding how courts should follow the dicta contained in the *Smith* decision.") (Cavanagh, J. *dissenting*) (Table); *See also Kissinger v. Board of Trustees*, 5 F.3d 177, 180 (6th Cir. 1993):

> We do not see how a state regulation would violate the Free Exercise Clause if it implicates other constitutional rights but would not violate the Free Exercise Clause if it did not implicate other constitutional rights. . . . [T]herefore, at least until the Supreme Court hold that legal standards under the Free Exercise Clause vary depending on whether other constitutional rights are implicated, we will not use a stricter legal standard than that used in *Smith* to evaluate generally applicable, exceptionless state regulations under the Free Exercise Clause.

application of *Smith*'s general applicability rule. The limited scope of the question upon which this Court granted *certiorari* makes clear that this case will be decided under free speech and/or free press norms, not free exercise principles. The First Amendment right to engage in religious solicitation or evangelism is governed by the *Lovell-Cantwell-Murdock* line of cases as supplemented by free speech decisions like *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995). *Smith* itself specifically excepted this line of cases from its holding, stating that they were different because they involved "communicative activity". 494 U.S. at 882. That difference means everything when it comes to preserving the right to proselyte religiously door to door. If the "generally applicable and neutral" rule of *Smith* controls in such a situation, then by definition personal religious expression can be subjected to the same rules and regulations as sales pitches made by commercial salesmen and peddlers. Religious expression will not retain its preferred status under the First Amendment; to the contrary, it will become routinely subjected to the lowest common denominator of regulations, with door-to-door proselyting treated and regulated just like every other form of commercial soliciting and sales.

The Church respectfully submits that this Court should put an end to the confusion and misapplication that surrounds the *Smith* rule in the area of religious speech and expression. As it did over a decade ago when it clearly set out the limitations of *Smith*, this Court should reaffirm that *Smith*'s general applicability rule has no place in the adjudication of rules regulating door to door proselyting, and that instead the time-tested rules set out in the *Lovell-Cantwell-Murdock* line of cases continue to govern.

CONCLUSION

For the reasons stated herein, and those contained in the brief of Petitioners, the decision below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICUS CURIAE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE

Pursuant to United States Supreme Court Rule 37.4, the Commonwealth of the Northern Mariana Islands (Commonwealth), through its Attorney General, submits this *amicus curiae* brief supporting Petitioners Watchtower Bible And Tract Society Of New York, Inc., and Wellsville, Ohio Congregation Of Jehovah's Witnesses, Inc.

The Commonwealth has a unique political relationship with the United States under an international agreement codified as the COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA, Pub. L. No. 94-241, 90 Stat. 263, 42 U.N. TCOR Annex, U.N. Doc. T/1759 (1975), 48 U.S.C. 1801 & note (West Supp. 2001) (Covenant). *See generally United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d 749, 751-752, 754 (9th Cir. 1993); S. REP. No. 433, 94TH CONG. 1ST SESS. 65 (1975). The Commonwealth is an archipelago of 21 islands, with 184 square miles of land surface, collectively extending about 400 miles northward of Guam in the West Pacific ocean. S. REP. No. 596, 94TH CONG. 2D SESS. 2 (1976), *reprinted in* 2 1976 U.S. CODE, CONG. & ADMIN. NEWS 448, 449. Like residents of the States and other United States-affiliated islands, the people of the Commonwealth " 'are a religious people whose institutions presuppose a Supreme Being.' " *Marsh v. Chambers*, 463 U.S. 783, 792 (1983) (citation omitted).

The Commonwealth came within United States sovereignty pursuant to the Covenant in the mid-1980's. Prior to the Covenant, the Commonwealth was part of the now-defunct Trust Territory of the Pacific Islands, which the

United States administered as a United Nations trustee. *See generally* TRUSTEESHIP AGREEMENT FOR THE FORMER JAPANESE MANDATED PACIFIC ISLANDS, July 18, 1947, 61 Stat. 3301, T.I.A.S. No. 1665; *Saipan Stevedore v. Director, Workers' Comp. Programs*, 133 F.3d 717, 720-721 (9th Cir. 1998); *United States ex rel. Richards v. De Leon Guerrero*, 4 F.3d at 751-752.

The Commonwealth, like all governments under the American flag, is bound by the First and Fourteenth Amendment principle that "the government may (and sometimes must) accommodate religious practices [.]" *Hobbie v. Unemployment Appeals Board Commission of Florida*, 480 U.S. 136, 144 (1987). The First Amendment, including its guarantee of religious freedom, applies without limitation in the Commonwealth. *See* Covenant Section 501(a). As declared a century ago when this court first expounded the constitutional dimensions of insular relationships with the United States, freedom of religion is a fundamental constitutional right which is "indispensable to a free government." *Downes v. Bidwell*, 182 U.S. 244, 282-283 (1901) (plurality); *id.* at 290-291, 294, 298 (White, J., concurring).

The protection of the free exercise of religion, and the promotion of governmental accommodation of religion consistent with the First Amendment, thus is of vital interest to the people of the Commonwealth. This interest is particularly important in light of the Commonwealth's centuries of colonial domination by others prior to its voluntary accession into the American political family. Hundreds of years of colonial rule by Spain, Germany and Japan included both the suppression of indigenous religions and official preferences for certain faiths. SECOND INTERIM

REPORT OF THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS TO THE CONGRESS OF THE UNITED STATES 8 (1985); Don A. Farrell, HISTORY OF THE NORTHERN MARIANA ISLANDS 115, 149-154, 312-313 (1991); Francis X. Hezel, FROM CONQUEST TO COLONIZATION: SPAIN IN THE MARIANA ISLANDS (1989).

Because of this history, the Commonwealth is especially sensitive to the constitutional obligation of government throughout the United States to safeguard and accommodate the free exercise of religion, consistent with First Amendment constraints against the official establishment of religion. With respect, the Commonwealth asserts that the rulings below undercut this fundamental constitutional principle.

SUMMARY OF ARGUMENT

A. Enforcement of the First Amendment right of anonymity in the context of religious speech is necessary to preserve that constitutional right, as well as to further the related constitutional purpose of accommodating the free exercise of religion. This court historically has enforced the governmental obligation under the First Amendment to accommodate the free exercise of religion. This case provides an appropriate opportunity for reiteration of that constitutional obligation.

B. The First Amendment right of anonymous speech applies to door-to-door religious speech for the same constitutional reasons that mandated recognition of that right as to political speech in *Talley v. California*, 362 U.S. 60 (1960), *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995) and *Buckley v. American Constitutional Law Foundation, Inc.*, 525 U.S. 182 (1999). There is no

constitutional justification, either textual or historical, for providing less protection to religious speech than to political speech. The Stratton ordinance violates the First Amendment both by infringing upon the right of anonymous speech and by singling out for suppression the religious speech of Jehovah's Witnesses. Stratton's asserted justification for its ordinance, on the ground that it deters recurrence of consumer fraud by door-to-door solicitors, lacks the relevant and concrete evidentiary basis required by the First Amendment.

ARGUMENT

A. ENFORCEMENT OF THE FIRST AMENDMENT RIGHT OF ANONYMOUS SPEECH WILL FURTHER THE RELATED FIRST AMENDMENT REQUIREMENT OF GOVERNMENTAL ACCOMMODATION OF RELIGION

Enforcement of the First Amendment right to anonymous speech in the context of religious speech, as requested by Petitioners, is essential both to preserve that right and to promote the governmental accommodation of religion required by the Free Exercise Clause. As previously noted, the Free Exercise Clause provides that "the government may (and sometimes must) accommodate religious practices [.]" *Hobbie v. Unemployment Appeals Board Commission of Florida*, 480 U.S. at 144. So it is here.

Governmental accommodation of constitutional "free exercise values" is "in line with 'our happy tradition' of 'avoiding unnecessary clashes with the dictates of conscience.' " *Gillette v. United States*, 401 U.S. 437, 453 (1971). This court accordingly has held government to its

constitutional obligation to accommodate religion without transgressing constraints against the establishment of religion. *See, e.g., Wooley v. Maynard*, 430 U.S. 705, 707-708, 713-717 (1977) (First Amendment prohibited New Hampshire from compelling Jehovah's Witnesses to display license plate slogan offensive to their religious beliefs); *Wisconsin v. Yoder*, 406 U.S. 205, 214-236 (1972) (First Amendment prohibited Wisconsin from compelling high school attendance by Amish children in conflict with their religion); *Sicurella v. United States*, 348 U.S. 385, 388-391 (1955) (Universal Military Training and Service Act construed to allow conscientious objector claim by Jehovah's Witness who opposed participation in government-declared wars but supported participation in a future divinely-declared spiritual war); *West Virginia Board of Education v. Barnette*, 319 U.S. 624, 634-642 (1943) (First Amendment prohibited public schools from compelling flag salutes by Jehovah's Witness students in violation of their religious beliefs).

This case provides an appropriate opportunity for the encouragement of accommodation of religion consistent with the commands and constraints of the First Amendment. That is a message worth repeating for the benefit of governmental entities throughout the United States. When, as here, the record shows that a governmental regulation burdens the free exercise of religion, " 'only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.' " *Hobbie v. Unemployment Appeals Board Commission of Florida*, 480 U.S. at 142 (citation omitted). As demonstrated herein, Stratton has not presented evidence, or anything other than speculation, to establish overriding interests which justify the burden upon the free exercise of religion caused by the identification requirement in its

ordinance. Confirmation that this requirement violates the Free Exercise Clause will preserve and strengthen the right to anonymous speech guaranteed by the First Amendment, as well as reinvigorate the related doctrine mandating governmental accommodation of religion.

B. THE FIRST AMENDMENT RIGHT OF ANONYMITY IN POLITICAL SPEECH APPLIES EQUALLY TO RELIGIOUS SPEECH

In upholding most of the ordinance at issue here, the United States Court of Appeals for the Sixth Circuit undermined the First Amendment right of anonymous speech long recognized by this court. This court enforced that right in the context of political speech in *Talley v. California*, 362 U.S. 60, 64-65 (1960). It reaffirmed that right, again as to political speech, in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 341-344, 357 (1995) and *Buckley v. American Constitutional Law Foundation, Inc*, 525 U.S. 182, 199-200 (1999). The Sixth Circuit misinterpreted *McIntyre* and never mentioned *Talley* or *Buckley*. While acknowledging that *McIntyre* "established a First Amendment right to distribute political pamphlets anonymously," the Sixth Circuit refused to apply the constitutional rationale of *McIntyre* to the religious speech of Jehovah's Witnesses. *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d 553, 563 (6th Cir. 2001). This ruling misconceived constitutional doctrine.

There is no basis in the language or history of the First Amendment for affording less protection to religious speech than to political speech. *Buckley* underscored that First Amendment protection is " 'at its zenith' " when speech

"involves 'interactive communication concerning political change.' " *Buckley*, 525 U.S. at 186-187. Interactive communication concerning religion, such as that involved in door-to-door ministry, warrants the same heightened constitutional protection. As established over fifty years ago in decisions upholding the religious speech rights of Jehovah's Witnesses, the freedoms of religion, press, speech and assembly guaranteed by the First Amendment equally deserve "the same preferred treatment." *Saia v. State of New York*, 334 U.S. 558, 561 (1948); *accord Cantwell v. Connecticut*, 310 U.S. 296, 310 (1940). "[T]hese liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy." *Cantwell v. Connecticut*, 310 U.S. at 310. The courts below did not adequately consider these constitutional values.

1. The First Amendment Right Of Anonymous Speech

The rulings below contravened fundamental First Amendment principles, which guarantee the right to engage in anonymous speech. As held in *McIntyre* and *Talley*:

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation – and their ideas from suppression – at the hands of an intolerant society.

McIntyre, 514 U.S. at 357 (citation and footnote omitted).

> [T]he interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an author's decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment.

Id. at 342 (footnote omitted).

> Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either anonymously or not at all ... Even the Federalist Papers, written in favor of the adoption of our Constitution, were published under fictitious names. It is plain that anonymity has sometimes been assumed for the most constructive purposes.

Talley, 362 U.S. at 64.

> [Q]uite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity. Anonymity thereby provides a way for the writer who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.

McIntyre, 514 U.S. at 342.

As reflected by *McIntyre* and *Talley*, the First Amendment right of anonymous speech is especially important in the context of pamphlet distribution such as that conducted through door-to-door ministry by Jehovah's Witnesses. "The liberty of the press is not confined to newspapers and periodicals. It necessarily embraces pamphlets and leaflets. These indeed have been historic weapons in the defense of liberty [.]" *Lovell v. City of Griffin*, 303 U.S. 444, 452 (1938) (ruling unconstitutional a conviction of a Jehovah's Witness under an ordinance that banned literature distribution within city without city manager's permission). As this court unanimously held when reversing an unconstitutional conviction of a Jehovah's Witness under an ordinance banning the house-to-house distribution of literature without a permit:

> [P]amphlets have proved most effective instruments in the dissemination of opinion. And perhaps the most effective way of bringing them to the notice of individuals is their distribution at the homes of the people ... To require a censorship through license which makes impossible the free and unhampered distribution of pamphlets strikes at the very heart of the constitutional guarantees.

Schneider v. New Jersey, 308 U.S. 147, 164 (1939); *see id.* at 157-159, 163.

The holding above in *Schneider* reflects this court's vigilant protection of the First Amendment right to engage in the door-to-door communication of religious speech. The constitutional imperatives for this vigilance were elaborated in a decision which reversed the conviction of a

Jehovah's Witness for door-to-door distribution of religious literature in violation of an ordinance held unconstitutional in *Martin v. City of Struthers*, 319 U.S. 141 (1943).

Martin observed that "[m]any of our most widely established religious organizations have used this method of disseminating their doctrines." *Martin v. City of Struthers*, 319 U.S at 145 and n.6. As *Martin* further explained:

> For centuries it has been a common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings . . . [¶¶] The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance . . . [¶¶] Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that, putting aside reasonable police and health regulations of time and manner of distribution, it must be preserved. The dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas.

Id. at 141, 143, 146-147; *accord Marsh v. Alabama*, 326 U.S. 501, 505 (1946) (reversing unconstitutional conviction of a Jehovah's Witness for distributing religious literature without a permit on privately owned sidewalk).

2. Stratton's Ordinance Violates The First Amendment By Infringing Upon The Right Of Anonymous Speech And By Singling Out For Suppression The Religious Speech Of Jehovah's Witnesses

Stratton's ordinance does not withstand scrutiny under these First Amendment principles. The ordinance has essentially the same defect that rendered unconstitutional the laws struck down in *McIntyre*, *Talley* and *Buckley*.

Here, as in those three cases, the law in question purports to suppress speech protected by the First Amendment unless the speaker first divulges his or her identity. Sections 116.03 and 116.04 of Stratton's ordinance prohibit door-to-door canvassing on private property unless one first obtains, and displays upon request, a municipal permit identifying the canvasser by name and address. *See* REPLY BRIEF SUPPORTING PETITION FOR CERTIORARI, APPENDIX at 3-4. The unconstitutional ordinances in *McIntyre* and *Talley* similarly prohibited political campaign literature that did not bear the names and addresses of the people who wrote, printed and distributed it. *McIntyre*, 514 U.S. at 336, 338 and n.3; *Talley*, 362 U.S. at 60-61, 64. In *Buckley*, this court unanimously ruled unconstitutional a statute that required initiative petition circulators to wear identification badges bearing their names. *Buckley*, 525 U.S. at 186, 197-200; *id.* at 206 (Thomas, J., concurring in the judgment); *id.* at 217 (O'Connor, J., concurring in part in the judgment and dissenting in part); *id.* at 232 (Rehnquist, C.J., dissenting).

In a holding equally applicable to Stratton's ordinance, *Talley* explained why identification requirements violate the First Amendment:

> There can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression. "Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation, the publication would be of little value."

Talley, 362 U.S. at 64 (citation omitted). *See also Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 88, 91-98, 101-102 (1982) (First Amendment right of privacy of association prohibits compelled disclosure of names and addresses of political party's financial contributors and recipients).

Stratton's ordinance also violates the First Amendment, both facially and as applied, by singling out for suppression the religious speech of Jehovah's Witnesses. "[I]t was 'historical instances of religious persecution and intolerance that gave concern to those who drafted the Free Exercise Clause.' " *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 532 (1993). Governmental action denigrating a particular religion violates the First Amendment because it sends a message to adherents that they are outsiders, and an accompanying message to non-adherents that they are favored insiders within the community. *Wallace v. Jaffree*, 472 U.S. 38, 69 (1985). As James Madison forcefully explained:

> It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance.

THE COMPLETE MADISON 300, 303 (S. Padover ed. 1953).

As enacted and supplemented, Stratton's ordinance facially discriminated against Jehovah's Witnesses. In conjunction with enactment of the ordinance, Stratton promulgated a "registration" form on which residents could denote organizations that they wished to exclude from their property. Jehovah's Witnesses were the only religious group included among the organizations listed on the form, next to which residents could place a checkmark to indicate a desire to exclude. The courts below correctly invalidated the form as unconstitutional. *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d at 558-559, *affirming id.*, 61 F. Supp.2d at 739. But that does not end the inquiry.

Even if Stratton's ordinance is now facially neutral as to religion in light of the rulings below, "[f]acial neutrality is not determinative." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S at 534. "Apart from the text, the effect of a law in its real operation is strong evidence of its object." *Id.* at 535. The Free Exercise Clause "extends beyond facial discrimination," so as to forbid as well " 'subtle departures from neutrality' " and " 'covert suppression of particular religious beliefs.' " *Id.* at 534 (citations omitted).

This court therefore has strictly enforced the Free Exercise Clause when, as here, the suppression of religious speech by Jehovah's Witnesses resulted from the unconstitutional application of facially neutral ordinances. *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953); *Niemotko v. Maryland*, 340 U.S. 268, 272-273 (1951) (ordinances applied so as to allow religious speech in public parks by all religions except Jehovah's Witnesses). The record establishes that the Stratton ordinance was unconstitutionally applied with the intent to silence religious speech by Jehovah's Witnesses. Two years after enactment of the ordinance, Stratton's mayor confronted Jehovah's Witnesses who had renewed contact with residents who previously expressed interest in Bible-based discussions. The mayor told them that they were "not allowed" in Stratton, and that people had moved to Stratton with the "understanding" that Jehovah's Witnesses would not "bother" them. TR 76-77. The mayor's statements mirrored those made in the early 1990's by a Stratton police officer, who expelled Jehovah's Witnesses from the village while proclaiming that he "could care less" about their constitutional right to engage in door-to-door ministry. TR 58-59. "The Free Exercise Clause 'protects religious observers against unequal treatment' " such as that inflicted by Stratton against Jehovah's Witnesses in applying its ordinance. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. at 542 (citation omitted).

3. The Asserted Justification For The Village Of Stratton's Ordinance Has No Constitutional Or Evidentiary Basis

There is no merit to Stratton's attempt to justify the ordinance's identification requirement on the ground that it deters fraud. The courts below accepted this justification.

Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton, 240 F.3d at 565-567; *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 61 F. Supp.2d 734, 736-738 (S.D. Ohio 1999). However, "[i]n cases in which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusions of lower courts, but will re-examine the evidentiary basis on which those conclusions are founded." *Niemotko v. Maryland*, 340 U.S. at 271. Independent evidentiary review is necessary in part because "[t]he distinction between laws burdening and laws banning speech is but a matter of degree." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 812 (2000). Upon independent review, this court should reject for three reasons Stratton's asserted justification for its ordinance's identification requirement.

First, it is settled by *Talley*, *McIntyre* and *Buckley* that identification requirements in the circumstances here violate the First Amendment. The Sixth Circuit, which misconstrued *McIntyre* and ignored *Talley* and *Buckley*, erroneously upheld the identification requirement based upon pre-*Talley* dicta suggesting that such requirements might be permissible. *Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 240 F.3d at 562, citing *Martin v. City of Struthers*, 319 U.S. at 148 & n.14 and *Cantwell v. Connecticut*, 310 U.S. at 306.

Second, this court made clear, over sixty years ago, that generalized fears about fraud like those advanced here by Stratton are insufficient to overcome the First Amendment right of Jehovah's Witnesses to engage in door-to-door ministry.

> Conceding that fraudulent appeals may be made in the name of charity and religion, we hold that a municipality cannot, for this reason, require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval . . . Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech and press.

Schneider v. New Jersey, 308 U.S. at 164. As this court has observed in other contexts:

> [T]he fact that a given law or procedure is efficient, convenient and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution. Convenience and efficiency are not the primary objectives – or the hallmarks – of democratic government.

Bowsher v. Synar, 478 U.S. 714, 736 (1986) (constitutional separation of powers constraints invalidated legislation purporting to authorize congressional involvement in execution of laws).

Third, the record is devoid of evidence that Stratton's residents have suffered fraud or other overreaching at the

hands of door-to-door religious ministers. Not even the pre-*Talley* dicta mistakenly relied upon by the Sixth Circuit intimated that identification requirements are permissible without a relevant evidentiary basis. There is no such evidentiary basis here. Stratton asserts that it enacted its ordinance in response to complaints about occasionally fraudulent solicitors, most of whom had "commercial" purposes. BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI at 1. Based upon this assertion, Stratton invites judicial speculation that door-to-door religious ministry was part of the perceived problem. Nothing in the record supports such speculation. As cautioned by precedent in a variety of constitutional settings, "[s]peculations do not supply evidence [.]" *Burns v. Richardson*, 384 U.S. 73, 88 & n.14 (1966) (equal protection analysis of state legislative apportionment).

The First Amendment requires concrete evidence, not speculation, as a basis for regulation of the time, place and manner of protected speech. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. at 822 ("[T]he Government must present more than anecdote and supposition" to justify legislation requiring cable television operators to block or limit sexually explicit channels). As Justice Harlan emphasized in *Talley*, "generality is . . . too remote to furnish a constitutionally acceptable justification for the deterrent effect on free speech that this all-embracing ordinance is likely to have." *Talley*, 362 U.S. at 67 (Harlan, J., concurring). "The appropriateness of remedial measures must be considered in light of the evil presented. Strong measures appropriate to address one harm may be an unwarranted response to another, lesser one." *City of Boerne v. Flores*, 521 U.S. 507, 530-532 (1997)

(citation omitted) (Religious Freedom Restoration Act of 1993 invalidated in part due to of lack of evidence in legislative record of alleged harms).

The First Amendment therefore requires evidence that harms addressed by a regulation are real, substantial and direct.

> When the Government defends a regulation on speech as a means to redress past harms or prevent anticipated harms, it must do more than simply "posit the existence of the disease sought to be cured." It must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate those harms in a direct and material way.

Turner Broadcasting System, Inc. v. F.C.C., 512 U.S. 622, 664 (1994) (plurality) (citation omitted) (remanding for determination of availability of less restrictive means of cable television regulation).

The ordinance at issue here does not comport with these constitutional standards. As indicated, Stratton proffers only improper speculation as a basis for salvaging the ordinance. In doing so, Stratton also runs afoul of prior decisions for Jehovah's Witnesses which confirmed that religious speech enjoys greater First Amendment protection than commercial speech.

> The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use

> the press for expressing one's views is not to be measured by the protection afforded commercial handbills . . . Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way.

Murdock v. Commonwealth of Pennsylvania, 319 U.S. 105, 111 (1943); *accord Follett v. Town of McCormick*, 321 U.S. 573, 576-577 (1944) (ruling unconstitutional ordinances that prohibited house-to-house canvassing without a license and tax payment). *See also McIntyre*, 514 U.S. at 353-354 and nn.17-18 (questioning whether First Amendment protection of corporate speech is coextensive with constitutional protection afforded to individuals).

Justice Murphy framed the core constitutional value at stake, when concurring in the *Martin* decision upholding the First Amendment right of Jehovah's Witnesses to communicate religious speech from house to house. He reminded governmental entities and the public that "[f]reedom of religion has a higher dignity under the Constitution than municipal or personal convenience." *Martin v. City of Struthers*, 319 U.S. at 151 (Murphy, J., concurring).

This is true of all freedoms guaranteed by the Bill of Rights, which "are designed to limit the flexibility and freedom of governmental authorities." *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 322 (1987) (involving Fifth Amendment right to just compensation for temporary regulatory takings of property).

> When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of press and religion, as we must here, we remain mindful of the fact that the latter occupy a preferred position. As we have stated before, the right to exercise the liberties safeguarded by the First Amendment "lies at the foundation of free government" . . . and we must in all cases "weigh the circumstances and appraise the reasons in support of regulation of those rights."

Marsh v. Alabama, 326 U.S. at 509.

For the reasons above, this Court should hold unconstitutional under the First Amendment the identification requirement in Stratton's ordinance. As warned during congressional debate over the First Amendment, "[t]he rights of conscience are, in their nature, of peculiar delicacy, and will little bear the gentlest touch of governmental hand." I ANNALS OF CONGRESS 757 (1789) (remarks by Representative Carroll), *cited in Lee v. Weisman*, 505 U.S. 577, 605-606 (1992) (Blackmun, J., concurring). This case exemplifies the grave danger to constitutional rights which results when the governmental hand sweeps too broadly. With that danger in mind, the Commonwealth respectfully requests definitive confirmation that the First Amendment right to anonymous speech applies coextensively to religious speech and political speech.

CONCLUSION

The rulings below fundamentally conflicted with First Amendment jurisprudence. The judgment should be reversed in the interests of protecting as to religious speech the right of anonymous speech guaranteed by the First Amendment, and of promoting the related First Amendment requirement of governmental accommodation of religion.

Respectfully submitted,

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Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,

Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF *AMICUS CURIAE* INDEPENDENT BAPTIST CHURCHES OF AMERICA IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

The Independent Baptist Churches of America[2] believe that the First and Fourteenth Amendments to the United States Constitution guarantee them both free speech and the free exercise of religion, including the right to anonymous solicitation, of participation in and attendance in local churches and religions.

The Independent Baptist Churches of America believe that anonymous solicitation and canvassing of communities to solicit membership in churches and Sunday schools is both constitutionally protected and biblically prescribed. Specifically, the Independent Baptist Churches of America rely upon the First and Fourteenth Amendments to the United States Constitution, and upon the biblical imperatives stemming from Jesus Christ's command in Matthew 28:19, 20, and the biblical prescription for door-to-door, two-by-two canvassing as set forth in Luke 10:1:4.

This *amicus curiae* believes that to require permits for religious solicitation would be violative of its constitutional rights, and would permit local officials who may be

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that this Brief was not authored, in whole or in part, by counsel to a party, and that no monetary contribution to the preparation or submission of this Brief was made by any person or entity other than the *amicus curiae* or its counsel.

[2] An unincorporated group of Independent Baptist Churches designated as such merely for the convenience of the reader, and otherwise unaffiliated with a denominational church, and identified, separately and collectively, on Exhibit "A", attached hereto.

antagonistic toward one religious group, or favorable to another, to control the activities of those advocates of anonymous solicitation.

The Independent Baptist Churches of America have no stake in either of the parties to this Appeal or in the outcome of the Appeal, other than their interest in seeking correct and consistent interpretation of their constitutional rights to practice their religion anonymously and to follow the biblical imperatives.

CONSENT OF FILING OF *AMICUS CURIAE* BRIEF

In accordance with Supreme Court Rule 37.4(a), the Independent Baptist Churches of America have obtained written consent to the filing of this *amicus curiae* brief from counsel of record for both parties. The written consents of the parties are being filed with the Clerk of Court and accompany this Brief.

SUMMARY OF ARGUMENT

The Court of Appeals for the Sixth Circuit in *Watchtower Bible and Tract Society of New York, Inc.; Wellsville, Ohio, Congregation of Jehovah's Witnesses, Inc. v. Village of Stratton, Ohio; John M. Abdalla, Mayor of the Village of Stratton, Ohio, in his official capacity*, 240 F.3d 553 (6th Cir. 2001), *cert. granted*, No. 00-1737 (2001), has determined that an Ordinance of the Village of Stratton, Ohio, requiring registration and licensure of Jehovah's Witnesses does not violate the First Amendment's free speech guarantee

as applied to religious groups. The Court of Appeals for the Sixth Circuit has further found that the Ordinance in question did not violate the free exercise clause, as the Ordinance was content-neutral and a law of general applicability.

The Independent Baptist Churches of America support a reversal by the Supreme Court of the United States of the finding that the Ordinance did not violate the First Amendment's free speech guarantees as applied to religious groups, including, but not limited to, the Jehovah's Witnesses, as well as to other religious groups performing solicitation and canvassing of communities for religious purposes.

The principle advanced by the Independent Baptist Churches of America is that the Ordinance in question and those of similar genre will by necessity interfere with the exercise of free speech and free exercise rights protected by the First Amendment to the Constitution of the United States.

The Independent Baptist Churches of America maintain that Jehovah's Witnesses, as well as Baptists, and other religious groups in America, are entitled to the protection set forth in the First and Fourteenth Amendments to the Constitution and that the Ordinance adopted by the Village of Stratton, Ohio, improperly constrains the anonymous exercise of religion in America, as well as impermissibly affects the exercise of anonymous free speech, and religious solicitation as set forth herein.

ARGUMENT

I. Does a municipal ordinance that requires one to obtain a permit prior to engaging in the door-to-door advocacy of a political cause and to display upon demand the permit, which contains one's name, violate the First Amendment protection accorded to anonymous pamphleteering or discourse?

The Independent Baptist Churches of America stand squarely with the Jehovah's Witnesses with respect to the position that the Ordinance adopted by the Village of Stratton, Ohio, impermissibly and unconstitutionally requires the obtaining of a permit prior to door-to-door solicitation exercised by religious groups in conformity with the First Amendment of the United States Constitution.

An ordinance specifically requiring similar door-to-door solicitors for religious, charitable, or philanthropic causes to first obtain a permit was long ago recognized by this Court to be violative of the protection of the First Amendment's free speech and free exercise clauses. *Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1943).

In *Cantwell*, Mr. Justice Roberts delivering the opinion of the Court clearly stated the fundamental and essential concepts with respect to a similar statute:

> "We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. The fundamental concept of liberty embodied in that Amendment embraces the liberties guaranteed by the First Amendment . . . The constitutional

> inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts, – freedom to believe and freedom to act."

In *Cantwell*, the Court continued in its analysis of the applicability of the constitutional provisions clearly establishing the right of members of a religious body to anonymously solicit an interest in the solicitor's religious faith or political beliefs. This Court having long ago established these principles, should now clearly reaffirm the rights of the appellants to act in similar fashion.

The constitutional validity of the Village of Stratton's Ordinance hinges on the question of whether any religious organization should be required to obtain a permit to engage in door-to-door religious communications. The mere fact that permits are free and that religious organizations need only register prior to engaging in the door-to-door activities does not, by any means, suffice to pass constitutional muster.

As this Court stated in *Cantwell*, such arguments which imply that one can engage in protected speech after obtaining the free permit simply do not render the ordinance constitutionally sound. As Circuit Judge Gilman stated in his concurring and dissenting opinion in

the Sixth Circuit's decision in this case (240 F.3d 553 (2001)):

> "The majority emphasizes that 'the ordinance does not foreclose the option of going door-to-door; one only need register first' (Majority Opinion at 20-21). Such an argument implies that because a person can engage in speech once he or she has obtained a permit, all permit requirements are constitutional. This is clearly *not* the law." (See *Cantwell*, 310 U.S. at 303-07).

The requirement of obtaining a permit to canvass set forth in the Ordinance violates the First Amendment by burdening substantially more speech than is necessary to further the Village of Stratton's legitimate interests.

There already exist less intrusive means to protect the residents of the Village of Stratton against commercial fraud than the permit requirements of the Ordinance in question.

The Village of Stratton could obviously enforce existing laws to protect its citizens from fraudulent misrepresentation that may result from door-to-door solicitation. Existing laws include the Ohio Charitable Solicitation Act, the Consumer Sales Protection Act and the Home Sales Solicitation Act. (Ohio Rev. Code). As well, municipal officials can rely upon the right of individual property owners to enforce "no trespassing" mandates which are the right of any individual property owner. (*Village of Schaumburg*, 444 U.S. 620, 63 L.Ed.2d 73 (1980)).

Addressing the issue of the "means chosen", Mr. Justice Kennedy previously stated:

> "To be sure, this standard does not mean that a time, place, or manner regulation may burden substantially more speech than is necessary to further the government's legitimate interests. Government may not regulate expression in such a manner that a substantial portion of the burden on speech does not serve to advance its goals." *Ward v. Rock Against Racism*, 491 U.S. 781, 105 L.Ed.2d 661, 109 S.Ct. 2746 (1989).

The Ordinance was allegedly enacted to eliminate the potential for fraud and unwanted annoyance in the Village of Stratton. However, the Village of Stratton, by and through the testimony of Mayor Abdalla, has no burglaries, no crime, violent or otherwise, related to the door-to-door activities of canvassers. (See John M. Abdalla at TR 115, 116).

What the Village of Stratton does have is an Ordinance subjecting organizations like the Jehovah's Witnesses to a permitting process that substantially restricts their freedom of speech for their noncommercial evangelizing. The Ordinance not only restricts the Jehovah's Witnesses endeavor to seek converts, it also restricts other individuals or organizations wishing to engage in similar activities. This Ordinance burdens substantially more speech than is necessary to promote the legitimate Village objective of fraud protection, as stated by Circuit Judge Gilman in his concurring and dissenting opinion. See *Cleveland Area Board of Realtors v. City of Euclid*, 88 F.3d 382, 386-90 (6th Cir. 1996).

The requirement of obtaining a permit to engage in door-to-door advocacy of a political or religious cause, as in this case, is beyond the power of any municipality like

the Village of Stratton. The Ordinance is beyond the power of the Village of Stratton in that it is a violation of the Free Speech and Press Clauses as well as the Religion Clauses of the First Amendment.

One need only examine the Jehovah's Witnesses's canvassing activities to understand why the Ordinance is so repugnant to the Constitution. The Jehovah's Witnesses have adopted a form of grassroots approach to the advocacy of their cause including the dissemination of their own beliefs regarding a true religion. They offer Bible-based literature free of charge door-to-door, with their activities funded by voluntary donations. They do not solicit donations from door-to-door. Again, as stated in Circuit Judge Gilman's Concurring and Dissenting Opinion:

> "The Supreme Court, however, has stressed the unique role door-to-door solicitation as a means of communication, stating that 'as every person acquainted with political life knows, door-to-door campaigning is on of the most accepted techniques of seeking political support. . . . Door to door distribution of circulars is essential to the poorly financed causes of little people.' " *Martin v. City of Struthers*, 319 U.S. 141, 146 (1943).

Mr. Justice Thomas provides an excellent analysis from an historical perspective of the history of the Free Speech and Free Press clauses in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 131 L.Ed.2d 426, 115 S.Ct. 1511 (1995). Mr. Justice Thomas therein stated:

> The understanding described above, however, when viewed in light of the Framers' universal practice of publishing anonymous articles and pamphlets, indicates that the Framers shared the belief that such activity was firmly part of the freedom of the press. It is only an innovation of modern times that has permitted the regulation of anonymous speech.

As Mr. Justice Thomas further notes, the use of anonymous writing included advocacy of the ratification of the Constitution itself.

The Ordinance has stripped the Jehovah's Witnesses of their right to practice their religion anonymously. The Ordinance has imposed restrictions on their guaranteed right of Free Speech and Free Press as well as the exercise of their religion. The following seems to hold true in this instance:

> "The right of freedom of speech and press has broad scope. The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance.[3] This freedom embraces the right to distribute literature." *Martin v. City of Struthers*, 319 U.S. 141, 143 (quoting *Lovell v. Griffin*, 303 U.S. 444, 452).

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[3] "The only security of all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure." Jefferson to Lafayette, Writings of Thomas Jefferson, Washington ed. v. 7, p. 325.

In the Opinion delivered by Mr. Justice Black:

> "For centuries it has been the common practice in this and other countries for persons not specifically invited to go from home to home and knock on doors or ring doorbells to communicate ideas to the occupants or to invite them to political, religious, or other kinds of public meetings. Whether such visiting shall be permitted has in general been deemed to depend upon the will of the individual master of each household, and not upon the determination of the community. In the instant case, the City of Struthers, Ohio, has attempted to make this decision for all its inhabitants. The question to be decided is whether the City, consistent with the federal Constitution's guarantee of free speech and press, possess this power". (quoting from Mr. Justice Black's Opinion, *Martin v. City of Struthers*, 319 U.S. 141, 142).

In Ohio, the "individual master of each household" has the right to determine what political, religious or social representatives may or may not step upon his property. He has the right to post a "No Trespassing" sign on this property warning that they are uninvited and may be prosecuted to the full extent of the law. There is no need in the Village of Stratton to enact and enforce such an ordinance inconsistent with protected constitutional rights.

The City of Struthers ordinance did not safeguard the constitutional rights of Free Speech and Free Press. For the same reasons, this Ordinance should not stand.

This *Amicus Curiae* argues that the Ordinance is unconstitutionally overbroad because of the prohibitions

established regarding the door-to-door engagement of Free Speech. Although the Ordinance was enacted allegedly to protect its citizens from potential acts of fraud, with its intentions being arguably pure, the Ordinance is nonetheless overbroad in that it restricts constitutionally protected rights. "A clear and precise enactment may nevertheless be 'overbroad' if in its reach it prohibits constitutionally protected conduct", *Grayned v. City of Rockford*, 408 U.S. 104 (1972). This Ordinance not only prohibits the Jehovah's Witnesses from evangelizing door-to-door without a permit, it would appear that it also prohibits or could prohibit the Girl Scouts of America from selling cookies door-to-door, the Rotarians from soliciting members, or Baptists or other religious groups from practicing their religion anonymously, without first obtaining a permit.

Thomas Jefferson, the author of "The Virginia Act for Religious Freedom", summed up the fervor of the Founding Fathers with respect to religious freedom wherein the Act provided as follows:

> "SECT. II. We the General Assembly of Virginia do enact that no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, or shall otherwise suffer, on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities."

In *Village of Schaumburg v. Citizens For a Better Environment*, 444 U.S. 620, 63 L.Ed.2d 73 (1980), Mr. Justice Rehnquist stated:

> " . . . Such activity (house-to-house canvassing) may be worthy of heightened protection when limited to the dissemination of information, or when designed to propagate religious beliefs . . . " See, *e.g., Cantwell v. Connecticut*, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1943).

CONCLUSION

The United States Constitution does not sanction a community to encroach guaranteed freedoms in order to establish itself as an enclave free from contact with a religious minority. As Mr. Justice Marshall stated in *Grayned v. City of Rockford*, 408 U.S. 104, 33 L.Ed.2d 222 (1972):

> "We made clear that 'undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression.' " *Id.*, at 89 S.Ct., at 737, citing *Hague v. CIO*, 307 U.S. at 516, 59 S.Ct. at 964.

President Thomas Jefferson once advised his old friend, George Wythe, using the now famous message:

> "Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people." Jefferson's Letter To Wythe, August 13, 1786. See *Jefferson and the Rights of Man*, Dumas Malone, at Page 155.

The Independent Baptist Churches of America respectfully support the position espoused by the Appellants in this case.

Respectfully submitted,

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Exhibit "A"

Baptist Temple of Franklin – Franklin, Pennsylvania

Beacon of Truth Ministries – Sumter, South Carolina

Beeville Baptist Church – Beeville, Texas

Bethel Baptist Church – Jackson, Tennessee

Bible Baptist Church – Mercer, Pennsylvania

Center Road Baptist Church – West Seneca, New York

Countryside Baptist Church – Punxsutawney, Pennsylvania

Cross & Crown Baptist Church – Grant, Michigan

Faith Baptist Church – Seneca, Pennsylvania

Forest Area Baptist Church – Marienville, Pennsylvania

Frederick Baptist Temple – Frederick, Maryland

Freedom Baptist Church – Auburn, New York

Harvest Baptist Church – Acworth, Georgia

Heritage Baptist Church – Lawrence, Kansas

Independent Baptist Church of Kingwood – Kingwood, West Virginia

Independent Bible Baptist Church – Montoursville, Pennsylvania

Liberty Baptist Church – Rapid City, South Dakota

Madison Baptist Church – Madison, Alabama

Maranatha Baptist Church – Lyons, New York

Mayfield Baptist Church – Beaver Falls, Pennsylvania

Mountain Lake Baptist Church – Oakland, Maryland

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New England Baptist Church – Medford, Maine

Old Paths Baptist Church – Jefferson City, Missouri

Pioneer Valley Baptist Church – Westfield, Massachusetts

Points North Baptist Mission – New Philadelphia, Ohio

Temple Baptist Church – Baldwinville, New York

Victory Baptist Church – Pine Bluff, Arizona

West Coast Baptist Church – Vista, California

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No. 00-1737

IN THE
Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., and WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.,
Petitioners,

v.

VILLAGE OF STRATTON, OHIO, and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio, in his official capacity,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, NATIONAL LEAGUE OF CITIES, INTERNATIONAL CITY-COUNTY MANAGEMENT ASSOCIATION, U.S. CONFERENCE OF MAYORS, NATIONAL CONFERENCE OF STATE LEGISLATURES, NATIONAL ASSOCIATION OF COUNTIES, AND COUNCIL OF STATE GOVERNMENTS AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether the First Amendment is violated by the Village of Stratton's ordinance requiring door-to-door canvassers to register and obtain a permit from the Village office, and to display the permit on demand to homeowners who are the subject of canvassing or to the Village's police officer.

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INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.[1] The subject of this case—the ability of state and local governments reasonably to exercise their police power to protect homeowners from fraud and the invasion of privacy that may result from door-to-door canvassing of private residences—is of utmost importance to *amici* and their members.

While *amici* unequivocally support the broad protections of the First Amendment, that amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). The Court has repeatedly held that "consideration of a forum's special attributes is relevant to the constitutionality of a regulation," *id.* at 650, and that "[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Frisby v. Schultz*, 487 U.S. 474, 484 (1988) (citation omitted).

The Village of Stratton, a small municipality with a single police officer, seeks to enforce a content-neutral canvassing ordinance that does not in any way ban speech. The purpose of the Ordinance is to protect the privacy and well-being of Village residents in their homes by requiring canvassers to complete a simple registration form at the Village office, whereupon they automatically receive a solicitation permit at

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[1] The parties have consented to the filing of this *amicus* brief and their letters of consent filed with the Clerk of the Court. This brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amici* or their members, made a monetary contribution towards its preparation or submission.

no charge. Stratton's ordinance is not unique. *See, e.g.*, Plano, Texas, Code of Ordinances, Art. IV, §§ 11-141, 11-145-47; Grand Rapids Township, Michigan, Ordinance No. 315 §§ 1(a) & 2; Oshkosh, Wisconsin, Municipal Code § 8-54. The Village of Stratton and other local governments have acted in accordance with this Court's holding that door-to-door canvassing and solicitation for political and other non-commercial purposes are not "immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home." *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976).

Because of the importance of these issues to *amici* and their members, *amici* respectfully submit this brief to assist the Court in its resolution of this case.

STATEMENT OF THE CASE

A. The Village of Stratton, Ohio, is a municipality of approximately 300 residents located on the Ohio River. Pet. App. 38a. It consists of some businesses, J.A. 376a, and residential areas consisting of approximately 70 houses, plus additional residences in trailers and trailer courts. *Id.* at 424a-425a. The Village government includes a mayor, a Village Hall that is open for business from approximately 9:00 a.m. to 4:00 or 4:30 p.m., and a single police officer whose hours are from 7:00 p.m. to 3:00 or 4:00 a.m. J.A. 382a, 437a-438a.[2]

There are several public forums in Stratton in which anyone can freely advocate political or religious views. *See* J.A. 390a-395a (testimony of Mayor John Abdalla). These

[2] In addition, Stratton has "an auxiliary police officer that pinch hits as a relief police officer." J.A. 438a (testimony of Frank J. Bruzzese, Stratton Village Solicitor).

include the village square, an area near the post office,[3] Riverside Market, the Fifth Street playground, Stratton Park, and an area near the entrance to the Sammis Plant of the Ohio Edison Company, Stratton's largest employer. *See id.* Mayor Abdalla testified that in Stratton "[y]ou can stand on any street and speak about the Bible. You can go to any one of a variety of locations in Stratton that are accessible to the public and not on somebody's private property and speak about the Bible." *Id.* at 440a.

In 1998 the Village enacted Ordinance 1998-5 to regulate the activities of solicitors and canvassers who wish to go door-to-door in the Village. The Ordinance was, among other things, "designed to protect the privacy rights of Village residents." Pet. App. 38a (opinion of district court). According to the Village Solicitor who drafted the Ordinance, it was also adopted "to protect the Village residents from 'flim flam' con artists who prey on small town populations." *Id.*

The first section of the Ordinance provides:

> The practice of going in and upon private property and/or the private residences of Village residents in the Village by canvassers, solicitors, peddlers, hawkers, itinerant merchants or transient vendors of merchandise or services, not having been invited to do so by the owners or occupants of such private property or residences, and not having first obtained a permit pursuant to Section 116.03 of this Chapter, for the purpose of advertising, promoting, selling and/or explaining any product, service, organization or cause, or for the purpose of soliciting orders of the sale of goods, wares, merchandise or services, is hereby declared to be a nuisance and is prohibited.

Pet. App. 60a (Ordinance 1998-5, § 116.01).

[3] Stratton's residents do not receive mail delivery at their homes but instead collect their mail at the Village post office. J.A. 391a-392a.

The ordinance requires persons who intend to engage in covered activities to complete a registration form at the Village Hall and to obtain a solicitation permit.[4] Pet. App. 60a-61a (§ 116.03). Each registrant who completes the form is automatically issued a permit. *Id.* at 62a (§ 116.04) ("Each Registrant who complies with Section 116.03(b) shall be furnished a Solicitation Permit."); J.A. 423a (testimony of Village Solicitor Bruzzese) (issuance of permit is "automatically triggered by a completed information form"). There is no charge for a solicitation permit. Pet. App. 40a-41a.

The ordinance also contains a provision that explains how any "owner or lawful occupant of private property" in Stratton can prohibit uninvited canvassing upon that property, *id.* at 63a-65a (§ 116.07), including the posting of a "No Solicitation" sign at the entrance to their homes. *Id.* at 64a. In addition, the Village makes available to residents a "No Solicitation Registration Form" which can be filed at the Village office, in which residents can indicate that they prohibit solicitors and canvassers from entering on their property. Pet. App. 64a-65a; J.A. 227a-229a. This form also allows residents to indicate specific exceptions to that prohibition. Pet. App. 65a; J.A. 228a-229a. Signs at Stratton's north and south corporation limits notify persons entering the Village: "Speed checked by radar. No solicitation without a permit. Violators will be prosecuted." J.A. 376a; *see also* J.A. 415a.

B. On June 3, 1999, petitioners, whose members wish to engage in door-to-door canvassing in Stratton on behalf of the Jehovah's Witnesses, brought an action for injunctive relief in which they challenged Stratton Ordinance 1998-5 as

[4] Some provisions of Stratton's ordinance and forms were modified by the district court. *See* Pet. App. 41a-42a. The registration form, as modified by the district court, is described *infra* at 5-6.

a violation of their rights under the First and Fourteenth Amendments. *See* Pet. App. 37a-38a.[5] The district court issued its ruling on petitioners' claims following an evidentiary hearing. *Id.* at 38a. The court held as an initial matter that petitioners' canvassers fall within the coverage of the Stratton ordinance because they are "'canvassers' who visit homes in neighborhoods for the purpose of 'explaining' their 'cause,' the Gospel of Jehovah." *Id.* at 39a-40a (quoting Ordinance 1998-5, § 116.01). Turning to the merits of petitioners' claims, the court reviewed the ordinance and related forms, upholding some provisions and modifying others.

The portions of the ordinance and solicitor's registration form upheld by the district court were those that require canvassers and solicitors to state: their name, home address, and residence address for the five years preceding the date of registration; a brief description of the nature and purpose of their canvassing or solicitation; the name and address of their employer or the organization with which they are affiliated, with credentials from the employer or organization; and the length of time for which they wish to solicit. Pet. App. 40a-41a & n. 2.

The district court invalidated the portion of the ordinance and registration form that required the registrant to list the address of each residence in Stratton at which solicitation was to occur. Instead, the Village agreed to provide a list of Village residents willing to receive solicitors or canvassers for attachment to the registration form. *Id.* at 41a.[6] The final

[5] Because petitioners believed that Stratton's ordinance "did not apply to the pure speech and press activities of Jehovah's Witnesses," Pet. Br. 5, they apparently never filed a registration form at the village office and never received a solicitation permit. *See id.* at 5-6.

[6] The district court noted that the failure of the Village to provide this list to registrants at no cost could render the ordinance unconstitutional. Pet. App. 42a.

item on the registration form requires registrants to provide information concerning the purpose of their canvassing activities; with respect to petitioners, the court ruled that it would be sufficient for them simply to indicate that they "seek[] to canvass as part of the Jehovah's Witness ministry." *Id.* at 42a.[7]

As noted above, once an applicant has completed the registration form the issuance of a solicitation permit is automatic, free of charge, and not subject to the exercise of discretion by Village Officials. Pet. App. 40a-41a, 62a (Ordinance § 116.04).[8] Section 116.04 prohibits permittees from "go[ing] in or upon any premises" not indicated on the registration form or on the list of Village residents willing to receive canvassers furnished by the Village to registrants. *See id.* at 41a-42a, 62a.

Section 116.04 further provides that "[e]ach person shall at all times, while exercising the privilege[9] in the Village incident to such permit, carry upon his person his permit and the same shall be exhibited by such person whenever he is requested to do so by any police officer or by any person who is solicited." *Id.* at 62a. Neither in Section 116.04 nor in any other portion of the ordinance (either before or after its

[7] The court indicated that "lesser known organizations, particularly those marketing commercial products or soliciting only for contributions, may need to provide additional information." Pet. App. 42a.

[8] Mayor Abdalla testified that he signs blank solicitation permits in advance and leaves the pre-signed permits with the Village clerk, who distributes them once the permit application has been completed. *See* J.A. 386a-387a. The Mayor testified that no registrant has ever been denied a permit, nor has any permit, once issued, been revoked. *Id.*

[9] Although it did not strike the use of the word "privilege" in the Ordinance, the district court noted that "the exercise of a constitutional right is not a 'privilege' and to that extent the Ordinance mischaracterizes the issue." Pet. App. 43a n.4. The court ruled, however, that "[s]uch mischaracterization does not . . . by itself render the Ordinance unconstitutional." *Id.*

modification by the district court) is there any requirement that the permit contain the applicant's name.[10]

The district court also modified the time limits for solicitation contained in the Ordinance. Section 116.05, as drafted, stated that no solicitation would be permitted before 9:00 a.m. or after 5:00 p.m. Pet. App. 43a. Although this would have allowed door-to-door canvassing during that eight-hour period on weekends as well as on weekdays, the district court ruled that this time limitation "unnecessarily chills the plaintiffs' First Amendment right to speech." *Id.* It accordingly ruled that the 5:00 p.m. termination time was "unconstitutional on its face," *id.* at 44a, and ordered that the Ordinance be modified "to allow covered activities, including welcome door-to-door solicitation, to occur during reasonable hours of the day." *Id.* The court stated that "[t]his may be easily accomplished by listing reasonable times on a month to month basis." *Id.* at 44a-45a.

Finally, the district court modified page three of the No Solicitation Registration Form available to Village residents. *See, e.g.*, J.A. 167a-169a. The third page contains a list of specific organizations or causes that residents can check to indicate their willingness to receive canvassers from the designated organization. *See id.* at 169a. The sixth item on this list was "Jehovah Witnesses." *Id.* The district court ordered this item stricken from the list. Pet. App. 45a.

Petitioners appealed the judgment of the district court upholding certain portions of the ordinance and forms, as

[10] The text of the blank "Permit to Canvass to Solicit, etc." in the Joint Appendix contains a reference to "the above Applicant" as having received a permit to canvass in the Village. J.A. 248a. The inclusion of the applicant's name is not, however, required by the Ordinance and the blank permit included in the Joint Appendix does not contain a space for the applicant's name. *See id.* The permit does state that "[t]he address or addresses of parties inviting the Applicant appear above in Applicant's Application." *Id.*

modified. *Id.* at 2a. The Village did not appeal any of the district court's modifications of the ordinance or forms. *See id.* The court of appeals affirmed the judgment of the district court. *Id.*

SUMMARY OF ARGUMENT

A. This Court has repeatedly held that the First Amendment "does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981). The "nature of the forum" is an integral part of the Court's analysis in cases involving speech regulation. *See, e.g., Frisby v. Schultz*, 487 U.S. 474, 479 (1988).

The Court has accordingly distinguished regulation of speech in public forums from that in non-public forums, such as private residences. Of all non-public forums, the one entitled to greatest protection is the private home. Consequently, the Court has squarely held that "door-to-door canvassing and solicitation" are not "immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home." *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976).

Stratton's requirement that all persons wishing to engage in door-to-door canvassing at private homes in the Village must first register and obtain a permit is constitutional under this Court's precedents, such as *Heffron*. In that case the Court upheld a content-neutral law that made it a misdemeanor to distribute or sell printed or written religious materials at the Minnesota state fair anywhere on the fairgrounds except at a licensed booth or other assigned location. The Court reasoned that the State had a substantial interest in the orderly movement and control of persons at the fair and that the State was not required to use less restrictive means to accomplish

this goal. In addition, there were alternative forums outside the fairgrounds where the Krishnas could disseminate their views. "More importantly," the Court said, "the Rule has not been shown to deny access within the forum in question." 452 U.S. at 654.

Like the regulation at issue in *Heffron,* Stratton's registration scheme is content-neutral, does not ban any speech, leaves open numerous alternatives for the communication of religious and political ideas, and advances a very substantial government interest—protecting the privacy and safety of residents in their homes.

The basic information that Stratton asks canvassers to provide at the time of registration is also comparable to the disclosures that were the subject of First Amendment scrutiny in *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182 (1999), and were upheld either by this Court, *see id.* at 192 n. 11, 196; *id.* at 233 (Rehnquist, C.J., dissenting), or by the Tenth Circuit. *See id.* at 202 (citing 120 F.3d at 1104-05).

The only provision of the Stratton disclosure rules that does not have a counterpart in the regulations that survived judicial scrutiny in *Buckley* reflects the fact that Stratton's ordinance regulates canvassing at private homes, while *Buckley* involved signature solicitation in public forums. This is Stratton's requirement that registrants provide the address of each Stratton residence at which they plan to canvass. This requirement, however, was modified by the district court to require the Village to provide each registrant, at no charge, a list of Village residents willing to receive canvassers. *See* Pet. App. 41a.

B. The Village's regulatory scheme is constitutional insofar as it requires a canvasser to carry a permit and to exhibit the permit whenever requested to do so by a homeowner who is the subject of canvassing or by the

Village's police officer. The unique potential for harm posed by canvassing of private homes in a small town with elderly residents and a single police officer on duty only in the evening and early morning hours renders Stratton's permit scheme valid under the First Amendment.

The ordinance does not require that the permit contain the canvasser's name and the permit issued by the Village apparently does not even contain a space for the canvasser's name. *See* J.A. 248a. If the Village were to deem it necessary to include identifying information on the permit, this could easily be done without disclosing the canvasser's name. For example, the Village could assign each registrant a unique number consisting of the last two digits of the year in which the permit is issued, together with a number indicating the sequence of the permit for that year (*e.g.*, No. 98-2). This information would be easy for a homeowner to remember or record, and sufficient to enable Village authorities to enforce the ordinance against canvassers who violate the terms of Stratton's ordinance or other state or local laws.

ARGUMENT

THE STRATTON ORDINANCE REQUIRING DOOR-TO-DOOR CANVASSERS TO REGISTER AND OBTAIN A PERMIT AND TO DISPLAY THE PERMIT ON DEMAND DOES NOT VIOLATE THE FIRST AMENDMENT

This Court has repeatedly emphasized that it is "common ground. . . that the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." *Heffron v. International Soc. For Krishna Consciousness, Inc.*, 452 U.S. 640, 647 (1981) (collecting cases); *Frisby v. Schultz*, 487 U.S. 474, 479 (1988). "[C]onsideration of a forum's special attributes is relevant to the constitutionality of a regulation since the

significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved." *Heffron*, 452 U.S. at 650-51.

As the Court explained in *Frisby*,

> To ascertain what limits, if any, may be placed on protected speech, we have often focused on the 'place' of that speech, considering the nature of the forum the speaker seeks to employ. Our cases have recognized that the standards by which limitations on speech must be evaluated 'differ depending on the character of the property at issue.'

487 U.S. at 479 (quoting *Perry Education Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 44 (1983)). *Frisby* emphasized that "'[t]he State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society.'" 487 U.S. at 484 (quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980)). *See also Bolger v. Youngs Drug Products Corp.*, 463 U.S. 60, 84 (1983) (Stevens, J., concurring in the judgment) ("regulations of form and context [of speech] may strike a constitutionally appropriate balance between the advocate's right to convey a message and the recipient's interest in the quality of his environment").

In a recent case involving the regulation of political speech, the Court reiterated that there is no "'litmus-paper test' [to] separate valid ballot-access provisions from invalid interactive speech restrictions," nor any "'substitute for the hard judgments that must be made.'" *Buckley v. American Constitutional Law Found., Inc.*, 525 U.S. 182, 192 (1999) (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)). This case, involving the regulation of protected speech in the quintessential nonpublic forum, the private home, provides no exception to the painstaking approach outlined in the Court's earlier cases. While hard judgments are invariably called for in First Amendment cases involving the regulation of

protected speech, an analysis of the Village of Stratton's registration and permit scheme demonstrates the validity of that scheme under the First Amendment.

A. The First Amendment Does Not Prohibit Municipalities From Requiring Canvassers And Solicitors To Register And Obtain A Permit Prior To Conducting Door-to-Door Solicitation At Private Homes

This Court has repeatedly drawn a bright-line distinction between the regulation of speech in public forums and speech on private property. As the Court observed in *Cantwell v. Connecticut,* 310 U.S. 296 (1940),

> Even the exercise of religion may be at some slight inconvenience in order that the state may protect its citizens from injury. Without a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent.

Id. at 306. "A State or municipality may protect individual privacy by enacting reasonable time, place, and manner regulations applicable to all speech irrespective of content." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 209 (1975). *See also Carey*, 447 U.S. at 470-71 ("'no mandate in our Constitution leaves States and governmental units powerless to pass laws to protect the public from the kind of boisterous and threatening conduct that disturbs the tranquility of . . . homes'") (quoting *Gregory v. Chicago*, 394 U.S. 111, 118 (1969) (Black, J., concurring)).

These governmental concerns are heightened when canvassers seek to go door-to-door to engage in intensive one-on-one political or religious speech at private homes. This Court has squarely held that "door-to-door canvassing and solicitation" are not "immune from regulation under the State's police power, whether the purpose of the regulation is to protect from danger or to protect the peaceful enjoyment of the home." *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976). *See also Martin v. City of Struthers,* 319 U.S. 141, 144 (1943) (ordinances "may be aimed at the protection of the householders from annoyance, including intrusions upon the hours of rest, and at the prevention of crime"); *FCC v. Pacifica Found.*, 438 U.S. 726, 748 (1978) ("in the privacy of the home . . . the individual's right to be left alone outweighs the First Amendment rights of an intruder"); *City of Watseka v. IPAC,* 479 U.S. 1048, 1048 (1987) (White, J., dissenting) (purpose of ordinance regulating door-to-door canvassing "is to protect citizens' privacy and to prevent crime, obviously legitimate governmental objectives"); *Carey*, 447 U.S. at 478-79 (Rehnquist, J., dissenting) ("Whether . . . alone or accompanied by others. . . there are few of us that would feel comfortable knowing that a stranger lurks outside our home.").

It is thus beyond dispute that municipalities can regulate door-to-door canvassing for political or religious (to say nothing of commercial) purposes. The question presented in this case is the validity of Stratton's specific registration and permit requirements. *Amici* submit that both of these requirements are valid under the First Amendment.

As cases such as *Cantwell* and *Hynes* indicate, municipalities can and must have the police power to take carefully designed steps to regulate door-to-door canvassers. Even *Buckley,* which involved state regulation of political speech in *public* forums,[11] deemed a "legitimate control[]" the require-

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[11] Although not expressly stated in the Court's opinion, it is clear that the canvassing involved in *Buckley* was the mass solicitation of signatures for initiative petitions that could only be carried out in public forums. *See* Colo. Const. Art. V, § 1 (2) & (3) (number of signatures required to place an initiative or referendum on ballot must equal "at least five percent of

ment that each circulator submit a dated affidavit containing his or her name and notarized signature. 525 U.S. at 192 n.11, 196. *Buckley* also upheld the requirement that each solicitor disclose "the 'address at which he or she resides, including the street name and number, the city or town, [and] the county.'" *Id.* at 196 (quoting Colo. Rev. Stat. § 1-40-111(2) (1998)); *see also id.* at 233 (Rehnquist, C.J., dissenting).

Each case thus presents the question whether the regulatory measures adopted by the municipality are content-neutral, do not "undu[ly] hind[er] . . . political conversations and the exchange of ideas," *Buckley,* 525 U.S. at 192, and request only information that is "warranted by the state interests . . . alleged to justify those restrictions." *Id.* When analyzed under these standards, it is clear that the information sought by

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the total number of votes cast for all candidates for the office of secretary of state at the previous general election"); Colo. Rev. Stat. §1-40-108(1) (requisite number of signatures must be collected within six months). In the 2000 general election, 1,611,417 votes were cast for the various candidates for secretary of state. *See* Home Page of Colorado Secretary of State, 2000 Election Results (Nov. 7, 2000 General Election), available at http://www.sos.state.co.us/pubs/elections/main.htm. At present, at least 80,570 signatures must be collected within six months in order to place an initiative or referendum on the ballot in Colorado. This necessarily entails vastly different—and less intrusive—methods of political interaction in public forums than the intensive one-on-one canvassing at private homes regulated by Stratton's ordinance.

There are also indications in the opinions of both the majority and the dissent in *Buckley* that the Court was aware that the process of gathering signatures for initiatives and referenda has become a highly commercialized process in which gathering as many signatures as possible while engaging in as little political discourse as possible is the *sine qua non* of success. *See Buckley,* 525 U.S. at 202 ("Today the initiative and referendum process is dominated by money and professional firms.") (citation omitted); *id.* at 227 (Rehnquist, C.J., dissenting) ("in recent years, the initiative and referendum process has come to be more and more influenced by out-of-state interests which employ professional firms doing a nationwide business") (citations omitted).

Stratton's registration form and the manner in which permits are issued—automatically upon completion of the form—are constitutional.

First, the Stratton ordinance is content-neutral, applying by its terms to all persons wishing to canvass or solicit in the Village. *See* Pet. App. 60a-61a (Ordinance 1998-5, § 116.03); *see also* J.A. 230a-247a (solicitor's registration forms). Moreover, Stratton's regulatory scheme is tailored to require only essential information needed to protect homeowners from uninvited or dishonest canvassers and solicitors. In addition, the Village provides ample "alternative forums for the expression of [petitioners'] protected speech." *Heffron*, 452 U.S. at 654. *See* discussion *supra* at 2-3 (describing locations throughout the Village where political or religious speech may be engaged in without a permit). Finally, the Village's registration scheme is warranted by a compelling interest—that of protecting the safety and privacy interests of Stratton residents in their homes.

The validity of Stratton's registration requirement for canvassing at private homes is clear when it is compared to the regulation upheld in *Heffron,* which regulated religious speech and the distribution of religious literature in a "limited public forum." 452 U.S. at 655. Respondents in *Heffron*, members of the International Society for Krishna Consciousness, brought a First Amendment challenge to Rule 6.05 of the Minnesota Agricultural Society, a public corporation that operated the State Fair. Rule 6.05 made it a misdemeanor to distribute or sell printed or written material anywhere on the fairgrounds except from a licensed booth or other fixed and assigned location. Such locations were allocated by Fair officials on a nondiscriminatory, first-come, first-served basis.

The Krishnas challenged the applicable rule, arguing that it suppressed one of the core elements of their religion, the practice of Sankirtan, a religious ritual that requires members

to go into public places to distribute or sell religious literature and to solicit donations for the support of the Krishna religion. Reversing the Minnesota Supreme Court, this Court ruled that the state regulation that required Krishnas to confine their ritually required distribution, sales and solicitation activities to a fixed booth within the fairgrounds did not violate the First Amendment.

The Court first noted that the State had a substantial interest in "the orderly movement and control" of the "large crowds" that frequent the state fair, and that this state interest is a "substantial" one. 452 U.S. at 650. In particular, the Court noted that "without Rule 6.05 there would be widespread disorder at the fairgrounds." *Id.* at 653.

Next, the Court rejected the Krishnas' argument that the First Amendment required the State to employ "less restrictive means" to accomplish its objectives, "such as penalizing disorder or disruption, limiting the number of solicitors, or putting more narrowly drawn restrictions on the location and movement" of the Krishnas. *Id.* at 654. The Court ruled that the state officials, in crafting regulations applicable to solicitation at the State Fair, had to consider not only the needs of the Krishnas, but also "all other organizations that would be entitled to distribute, sell, or solicit if the booth rule" were replaced by some other regulatory regime. *Id.*

Finally, the Court determined that there were "alternative forums for the expression of [the Krishnas'] protected speech despite the effects of the Rule." *Id.* The Court first noted that "the Rule does not prevent [the Krishnas] from practicing Sankirtan anywhere outside the fairgrounds." *Id.* at 654-55. "More importantly," the Court added, "the Rule has not been shown to deny access within the forum in question." *Id.* at 655. The Court reasoned that the rule did not exclude the Krishnas from the fairgrounds but simply limited the Krishnas' canvassing and literature distribution to a fixed

location at the fairgrounds, on precisely the same terms as applied to every other organization participating in the State Fair. *Id.* at 654-55. In the Court's view, Rule 6.05 "provide[d] [the Krishnas] and other organizations with an adequate means to sell and solicit on the fairgrounds." *Id.* at 655.

Applied to this case, *Heffron*'s analysis supports the decision of the court below upholding Stratton's registration requirements as modified by the district court. First, the interest of the Village in preventing fraudulent solicitation or canvassing on private property and the protection of Village residents from uninvited canvassers or solicitors is plainly substantial, if not compelling. Second, the Village's application scheme is permissive to begin with, as it does not exclude any law-abiding organization or individual from obtaining a permit and allows them to canvass at any home in the Village in which the resident has not indicated an unwillingness to receive canvassers. It is thus difficult to envision how the Village could accomplish its valid objectives by less restrictive means, especially given its limited law enforcement resources and the extensive hours during which canvassing is permitted under the district court's order. As it is, canvassing is permitted from 9:00 a.m. until well in the evening, *see* Pet. App. 43a-45a, and the Village's single police officer is on duty only from 7:00 p.m. until 3:00 a.m. *See* J.A. 382a, 437a-438a.

Finally, the regulatory scheme applies only to canvassing at private homes. There is ample testimony in the record about the numerous public forums throughout the Village where religious or political discussion can be carried on by any person or organization without an application or permit of any kind. *See* J.A. 390a-395a; 440a. In short, under the analytical framework laid down by this Court in *Heffron*, which also involved the efforts of a religious group to disseminate information about its religion, the Stratton application scheme is valid under the First Amendment.

The information requested by Stratton's registration form as modified by the district court also falls within the parameters of permissible regulation established by this Court two years ago in *Buckley*, in which state laws that required the disclosure of similar information satisfied judicial scrutiny. *Buckley* is particularly instructive because it upheld the disclosure of solicitors' names, addresses, and other information in the context of political speech in public forums, in contrast to the non-public forums regulated by the Stratton ordinance, which implicate residential safety and privacy interests not present in *Buckley*.[12]

Analyzed in light of the standards articulated in *Buckley* and the particular concerns raised by door-to-door canvassing, *see, e.g., Hynes*, 425 U.S. at 616-20, the disclosure requirements contained in Stratton's registration form satisfy the First Amendment. First, they do not "significantly inhibit communication . . out proposed political change." *Buckley*, 525 U.S. at Second, the information required

[12] Since one purpose of the Stratton ordinance is to prevent canvassing at the private homes of Stratton residents who do not wish to be canvassed, one key feature of the Village's ordinance that would not be present in a public forum case is that the Stratton scheme leaves to the homeowner the decision about whether and by whom canvassing will be permitted. *See* Stratton Ordinance 1998-5, § 116.07 (Pet. App. 63a-65a). This is consistent with this Court's precedents on limitations on uninvited speech at private homes and on property rights generally. *See Frisby*, 487 U.S. at 484-85 ("a special benefit of the privacy all citizens enjoy within their own walls, which the State may legislate to protect, is an ability to avoid intrusions"); *Nolan v. California Coastal Comm'n*, 483 U.S. 825, 831 (1987) ("We have repeatedly held that, as to property reserved by its owner for private use, the right to exclude [others is] one of the most essential sticks in the bundle of rights that are commonly characterized as property.") (internal quotations and citations omitted).

[13] As noted above, *see* discussion *supra* at 2-3, in addition to the homes of Stratton residents who wish to receive canvassers and solicitors, there are several public forums in Stratton where discourse on religious or

by the Solicitation Permit Application form, as modified by the district court, is "warranted by the state interests . . . alleged to justify" the information requested. *See id.*

The validity of Stratton's registration scheme is clear from a comparison of the disclosures required by the Stratton ordinance, as modified by the district court, with those that survived review by this Court or the Tenth Circuit in *Buckley*. That numerous disclosures survived judicial scrutiny in *Buckley* is especially significant in analyzing Stratton's permit application, since *Buckley* involved the regulation of mass signature solicitations in public forums, whereas the Stratton ordinance regulates one-on-one canvassing at private homes. *See* Br. *Am. Cur.* Brennan Center in Support of Neither Party 11 (*Buckley* "confirms that disclosure laws are constitutional, provided that individuals who . . engage in . . . one-on-one political advocacy . . . are not required to reveal their names while disseminating their message").

In *Buckley* this Court upheld a state law requirement that signature solicitors file with the Secretary of State an affidavit that contains the solicitor's name and, "among several particulars, the 'address at which he or she resides, including the street name and number, the city or town, [and] the county.'" 525 U.S. at 196 (quoting Colo. Rev. Stat. § 1-40-111(2) (1998)). The Stratton ordinance similarly requires canvassers to file at the Mayor's office their name and home address, plus their address of residence for the preceding five years. *See* Pet. App. 61a (Ordinance 1998-5, § 116.03 (b)(1)).

The *Buckley* Court further noted that the Tenth Circuit had "upheld the State's requirements for disclosure of *payors*, in particular, proponents' names and the total amount they have spent to collect signatures for their petitions." 525 U.S. at

political subjects can be freely undertaken by petitioners or advocates of any other causes.

202 (citing 120 F.3d at 1104-1105).[14] Stratton requires canvassers to disclose the name and address of their employer or affiliated organization, and documentation authenticating the canvasser's relationship with the employer or organization, as well as to provide "[s]uch other information. . . as may be reasonably necessary." Ordinance 1998-5, §§ 116.03(b)(3) & (6), Pet. App. 61a.[15]

The Colorado scheme at issue in *Buckley* required signature solicitation to be conducted "within six months from the date that the titles [and] submission clause . . . have been fixed." Colo. Rev. Stat. § 1-40-108(1) (quoted in *Buckley*, 525 U.S. at 188 n.4). The Stratton ordinance simply requires a permit applicant to state "[t]he length of time" during which canvassing or solicitation is expected to occur, with no time limit fixed by law. Pet. App. 61a (Ordinance 1998-5, § 116.03 (b)(4)).

One provision of the Stratton permit application has no counterpart in the Colorado petition scheme, reflecting the fact that Stratton's ordinance regulates intensive door-to-door solicitation at private homes whereas the Colorado laws regulate solicitation in public forums. This is the requirement, set forth in subsection 116.03(b)(5), that the applicant provide "[t]he specific address of each private residence at which the Registrant intends to" canvass or solicit. Pet. App. 61a. This provision, as noted above, *see* discussion *supra* at 18 n.12, is

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[14] The Court denied a cross-petition filed by the *Buckley* respondents, *see* 522 U.S. 1113 (1998), and did not rule on the provisions of the Colorado scheme upheld by the Tenth Circuit. *See* 525 U.S. at 201.

[15] As noted above, the district court ruled that in the case of petitioners, all that was required to comply with this provision of the ordinance was for petitioners to state that they "seek[] to canvass as part of the Jehovah's Witness ministry." Pet. App. 42a. Thus, as far as petitioners are concerned, the information required by subsection 116.03(b)(6) is even less than that required by subsection 116.03(b)(3), which requests the name and address of the registrant's employer or affiliated organization.

congruent both with this Court's property rights cases and those cases that emphasize the right of homeowners to exclude door-to-door canvassers without violating the canvassers' First Amendment rights. *See, e.g., Breard v. City of Alexandria*, 341 U.S. 622, 642-45 (1951); *id.* at 650 (Black, J., dissenting) ("Of course homeowners can if they wish forbid newsboys, reporters, or magazine solicitors to ring their doorbells."). In addition, under the ordinance as modified by the district court, the Village facilitates this process by providing to registrants upon request, and at no charge, a list of Stratton residents willing to receive canvassers. *See* Pet. App. 41a-42a.

Finally, the Stratton ordinance provides that once the registrant has completed the registration form, the issuance of a permit is automatic. *See* Ordinance 1998-5, § 116.04, Pet. App. 62a (each applicant who completes the application form "shall be furnished a Solicitation Permit"). The Village thus has *no* discretion to deny a permit to canvassers who have not previously violated any relevant state or local law and who provide the ministerial information requested by the form. No registrant has ever been denied a permit, nor has a permit ever been revoked. *See* J.A. 386a-87a. The ordinance is both content-neutral and ministerial insofar as the application for and issuance of solicitation permits is concerned. *See Heffron*, 452 U.S. at 649 (noting invalidity of speech regulations "open to . . . arbitrary application" and thus having "the potential for becoming a means of suppressing a particular point of view").

In short, under the standards applied in *Buckley* and other cases, Stratton's permit application and issuance procedures are valid. They do not "significantly inhibit communication" protected by the First Amendment, and are fully "warranted by the state interests . . . alleged to justify [the] restrictions," *Buckley*, 525 U.S. at 192, namely, the protection of residents from uninvited or fraudulent canvassing at their homes.

B. Stratton's Requirement That Canvassers Display Permits To Homeowners Or The Village's Police Officer Does Not Violate The First Amendment

The Village's regulatory scheme is constitutional insofar as it requires a canvasser to carry a permit and to exhibit the permit "whenever . . . requested to do so by any police officer or by any person who is solicited." Pet. App. 62a (Ordinance 1998-5, § 116.04). The unique potential for harm posed by canvassing of private homes in a small town with elderly residents and a single police officer on duty only in the evening and early morning hours, J.A. 382a, while solicitation can occur throughout the day, makes Stratton's scheme a permissible one under the Constitution. *See, e.g., Heffron,* 452 U.S. at 650-51 ("consideration of a forum's special attributes is relevant to the constitutionality of a regulation since the significance of the governmental interest must be assessed in light of the characteristic nature and function of the particular forum involved"). *Amici* accordingly urge the Court to hold that the Stratton application and permit scheme is valid in its entirety, as currently applied by the Village.[16]

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[16] In a number of lower court cases, canvassing registration and permit requirements have been deemed permissible by the court or conceded to be valid by plaintiffs. *See, e.g., New Jersey Citizen Action v. Edison Twp.,* 797 F.2d 1250, 1269 (3d Cir. 1986) (Weis, J., dissenting) ("plaintiffs here concede that identification may be required"), *cert. denied,* 479 U.S. 1103 (1987); *City of Watseka v. IPAC,* 796 F.2d 1547, 1557 (7th Cir. 1986) ("IPAC is more than willing to comply with Watseka's registration requirements and to honor all 'No Solicitors' signs" and objects only to "the 5 p.m. to 9 p.m. complete ban on solicitation"); *see id.* at 1554 (ordinance "required all solicitors to register with the city clerk, who would issue Certificates of Registration"), *aff'd,* 479 U.S. 1048 (1987); *ACORN v. City of Frontenac,* 714 F.2d 813, 818 & n.7 (8th Cir. 1983) (Frontenac's interests in protecting its residents can be served "by enforcement of the city's application and identification requirements for all canvassers, peddlers, and solicitors," which include an "identification card" which "shall, upon demand, be exhibited to any police officer or other City official, and shall be displayed to any person who is being solicited").

The Stratton permit does not require the canvasser's name, Resp. Br. 32 n.1, and as issued by the Village apparently does not even contain a space for it. J.A. 248a.[17] Nor does the language of the Ordinance require that a canvasser's name appear on the permit issued by the Village clerk. *Compare* Pet. App. 61a (Ordinance 1998-5, § 116.03(b)(1)) (requiring applicant to provide "name and home address"), *with* Pet. App. 62a (*id.* §116.04) (setting out "content" of permit but making no express reference to the inclusion of the applicant's name).

Even if a municipality were to deem it necessary to include identifying information on a canvassing permit, this could easily be done without disclosing the canvasser's name. *Cf. McIntyre v. Ohio Elections Comm'n,* 514 U.S. 334, 353 (1995) (invalidating state law prohibiting anonymous handbilling but recognizing that "a State's enforcement interest might justify a more limited identification requirement"). To give just one example, the permit could contain a unique number consisting of the last two digits of the year in which the permit was issued together with a number indicating the sequence of the permit for that year (*e.g.,* No. 98-2). A conspicuous identifying number of this kind would be clear, simple, and easy for a homeowner to remember or record. It would thereby provide adequate information to enable

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[17] Although the text of the blank permit contained in the Joint Appendix refers to "the above Applicant," there is no designated space in the permit form for the inclusion of the canvasser's name. J.A. 248a. "The permit form does not have the name of the individual on it and is pre-signed by Mayor Abdalla." Resp. Br. 32 n.1; *but cf.* Pet. Br. 8.

municipal authorities to enforce the law against canvassers who violate the terms of canvassing or solicitation ordinances or other state or local laws.[18]

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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January 9, 2002

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[18] In its *amicus* brief in support of neither party, the Brennan Center states that *Buckley v. ACLF* "suggests that Stratton, Ohio, could constitutionally require canvassers obtain a permit but not that they display it upon demand." Br. at 11 n. 3. *Amici* submit that the compelling purposes of the permit requirement would be far better served by using an identifying number for the canvasser and requiring canvassers to show their permit to homeowners or law enforcement officers upon request, than by a rule requiring canvassers to obtain a permit but prohibiting homeowners or police officers from seeing it.

Supreme Court, U.S.
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No. 00-1737

IN THE
Supreme Court of the United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC.
and
WELLSVILLE, OHIO, CONGREGATION OF JEHOVAH'S WITNESSES, INC.

Petitioners,

v.

VILLAGE OF STRATTON, OHIO and JOHN M. ABDALLA, Mayor of the Village of Stratton, Ohio in His Official Capacity,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF *AMICUS CURIAE* THE OHIO MUNICIPAL LEAGUE

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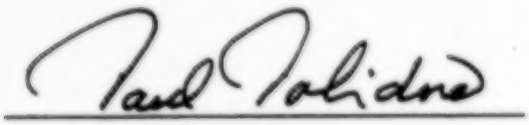
CONSENT OF THE PARTIES

The Ohio Municipal League, *amicus curiae,* has received the consent of both parties to file the within brief, pursuant to Rule 37.1 of the rules of this court. Below is the written consent of the Petitioners.

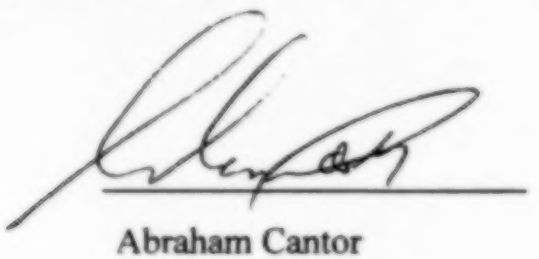


Paul Polidoro

Counsel for Petitioners

CONSENT OF THE PARTIES

The Ohio Municipal League, *amicus curiae,* has received the consent of both parties to file the within brief, pursuant to Rule 37.1 of the rules of this court. Below is the written consent of the respondent's counsel.



Abraham Cantor

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INTRODUCTION

At the heart of this case is the obligation, the right and the ability of local government to protect persons in their homes. The Respondent Village of Stratton has, by the passage of Ordinance 1998-5 and Chapter 116 of the Codified Ordinances, sought to protect the rights of the people of the Village to be safe their homes. The ordinance allows the people not to be bothered at their homes, if that is **their** choice. The key fact which makes Stratton ordinance constitutional is that individuals, i.e. property owners/occupants (not the government), have a means of expressing their right to decide who will be invited onto their property. This is not a "free expression in a public forum" or "free exercise of religion" case; this is a case about the protection of the rights of individuals to be left alone in their own homes.

The Ohio Municipal League believes that local government has the right and duty to protect people in their

homes. Under the facts of this case, the rights of private property owners/occupants are being protected by the Village, at the express direction of the owner/occupant, from unwanted intrusion by solicitors, including the Petitioners.

Petitioners' constitutional right to practice their religion and to speak freely and "anonymously" in traditional public *fora* certainly does not give them a special right to enter upon private property, against the wishes of the private property owner/occupant. This court is not bound by law or logic to create this special right, and the Ohio Municipal League asks this court affirm the decision of the Sixth Circuit Court of Appeals.

STATEMENT OF FACTS

The Ohio Municipal League hereby adopts, and incorporates by reference, the facts as presented by the Village of Stratton. The League also notes, with interest, that the Petitioners state, at page 2 of their Brief:

> "As part of their public ministry, individual Jehovah's Witnesses offer Bibles and Bible-based literature published in the Watchtower Bible and Tract Society ("Watchtower") to anyone who is interested in receiving it free of charge." (Citation omitted, emphasis added.)

The underscored portion of the above paragraph emphasizes that the Petitioners, by their own admission, are only seeking to contact people who are "interested" in being contacted.

Looking at the ordinance in a different light, the Village of Stratton is actually assisting the Petitioners by providing them with a ready-made list of people in the Village who are "interested" in hearing from the Petitioners, and a list of people who are not "interested" in hearing from the petitioners. Such a list could be viewed as a valuable time saver: the Petitioners will not be talking with people who are not "interested" in speaking to the Petitioners.

Since some people in the Village do not wish to hear from the Petitioners, by the Petitioners' own statement of intention, they should be willing to honor the wishes of the private property owner/occupant. The freedom to exercise one's religion cannot supercede another's right to be left alone in his or her home.

THE HOME AS CASTLE

This court has commented on the sanctity which the law accords the home:

> "In 1604, an English court made the now-famous observation that 'the house of every one is to him as his castle and fortress, as wall for his defence (sic) against injury and violence, as for his repose.' Semayne's Case, 77 Eng. Rep. 194, 5 Co. Rep. 91a, 91b, 195 (K.B.) In his commentaries on the Laws of England, William Blackstone noted that
>
> 'the law of England has so particular and tender a regard to the immunity of a man's house, that it stiles it to his castle, and will never suffer it to be violated with impunity: agreeing herein with the sentiments of ancient Rome... For this reason no doors can

> in general be broken open to execute any civil process; though, in criminal causes, the public safety supercedes the private.' William Blackstone, 4 Commentaries on the Laws of England 223 (1765-1769).
>
> The Fourth Amendment embodies this centuries old principle of respect for the privacy of the home: 'The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.' U.S. Const. Amd. IV. See also United States v. United States District Court for E.D. Michigan, 407 U.S. 297, 313, 92 S.Ct. 2125, 32 L.Ed.2d 752 (1972) ('[P]hysical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed')."

Wilson v. Layne, 526 U.S. 603, 119 S.Ct. 1692, at 1697, 143 L.Ed.2d 818 (1999).

Like the Fourth Amendment, the ordinance in the instant action is law designed to protect the fundamental right of the property owner. In this instance, the right is to exclude others from the owner's property. It does not directly affect

the Petitioners' right and ability to practice their religion in any way, unless they seek to enter upon private property. Not every person who seeks to go door to door is as morally upstanding as are the Petitioners, and the Village has sought a content-neutral means of accomplishing its goal of protecting people in their homes by obtaining information (including identity) from people who seek to enter on the property of strangers. This likely provides a prophylactic effect against those who would perpetrate fraud or harm under the guise of a door-to-door solicitor, and certainly protects the property owners/occupants by informing would be solicitors, or others, of the wishes of the owners/occupants.

The Petitioners, by challenging the Stratton ordinance, are seeking to violate the wishes of others who seek to exercise their right to be left alone in their homes. This result is not mandated by the Constitution. Rather, as noted above, the law

has a rich tradition of protecting the rights of property owners or occupants to be left alone in their homes/castles.

NOTICE TO TRESPASSERS

Under Ohio statutory law, the property owner has the right to exclude others from private property. If a person enters onto private property, after being notified that he or she is not permitted on that property, a charge of trespass may be brought. Ohio Revised Code §2911.21 provides, in pertinent part:

> "(A) No person, without privilege to do so, shall do any of the following:
> (1) Knowingly enter or remain on the land or premises of another;"

The posting of a sign is the usual mode of notifying the public that uninvited access to private property is not welcome, and the Stratton Ordinance provides for the posting of a sign to keep solicitors from entering upon the property of the home owner/occupant.

The posting of a sign, however, certainly need not be the exclusive method of permissible notification. The Village of Stratton has devised a very effective method of communicating the intentions of the Village's property owners to exclude would be door-to-door solicitors and canvassers. The Village allows the property owner/occupant to register at the Village Hall as a person who does not desire to receive visits from uninvited individuals.

This is analogous to the Village permitting the property owner to move the "No Solicitors" sign from the door step of the home to the Village Hall. Further, it collects all of the "signs" in one place. Any "burden" which is imposed on the Petitioners by prevcnting them going door to door is being imposed **not** by the Village, but by the **property owner/occupant**, i.e. the Village resident.

The Village's registration requirement is a reasonable means to ensure that the persons who wish to go door to door

in the Village have been advised of the permissible limits of such solicitation, including notification of those individuals who do not wish to be solicited. The "permission" to knock on a door is, ultimately, being granted or denied solely by the owner of the property, not by the Village.

The registration also ensures that the property owner/occupant can call the Village Hall to find out whether a solicitor is who he of she claims to be, and thereby protects the home owner/occupant from possible fraud or other criminal misconduct. No discretion for granting or denying a permit is being reposed in the Village, the Village is merely the collector of information which is being collected for the protection of individuals.

The subject ordinance's manifest protection of private property rights distinguishes this case from the public forum cases, which have been decided in favor of would be anonymous speakers. See, e.g. *Buckley v. American*

Constitutional Law Foundation, Inc. 525 U.S. 182 (1999), *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995).

No case exists which establishes that the "right" to "anonymity" is greater than a property owner/occupant's right to exclude people from his/her property. This should not be the first such case.

It is also somewhat ironic that a person who seeks to have personal, face to face contact with a stranger at the stranger's home is also seeking to be "anonymous." Clearly, such a rule could have severely adverse consequences if the "anonymous" door-to-door travelers lack the Petitioners probity.

THE CHOICE OF THE HOMEOWNER

The lower court's ruling is consistent with this Court's approval of the concept of a proposed form of regulation which was identified in *Martin v. City of Struthers*, 319 U.S. 141, 63 S.Ct. 862, at 866, 87 L.Ed.1313 (1943):

> "The National Institute of Municipal Law Officers has proposed a form of regulation to its member cities which would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed. This or any similar regulation leaves the decision as to whether distributors of literature may lawfully call at a home where it belongs -- with the homeowner himself. A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers. In any case, the problem must be worked out by each community for itself with due respect for the constitutional rights of those desiring to distribute literature and those desiring to receive it, as well as those who choose to exclude such distributers from the home." (Emphasis added, footnotes omitted.)

Id., at 148, 149, 63 S.Ct. 862, at 866, 87 L.Ed.1313.

By this language, this court expressly recognized the type of legislation adopted by the Village of Stratton which leaves the decision to exclude "***where it belongs -- with the home owner***."

INCREASED SAFETY CONCERNS

Recent events stemming from the terrorist attacks on New York City and the Pentagon, the anthrax mailings and earlier acts of terrorism clearly exhibit a need for government to be able to perform one of its principal functions: the protection of people. In order to do this, the government needs to know the identity and purpose of strangers who seek to gain access to private property. It really should not matter whether access is being sought to be a farmer's cattle feed lot in Nebraska, a trailer park in Stratton, Ohio or a large residence in Northern Virginia.

Those who are merely asked to register and comply with reasonable regulations in order to gain the privilege of entering upon private property (with the permission of the owner), may constitutionally be required to identify themselves. A "right" of anonymity, when seeking access to private property without the prior consent of the

owner/occupant of that property, invokes images of a parade of horribles. The images of this parade is far more vivid today than they were before September 11, 2001.

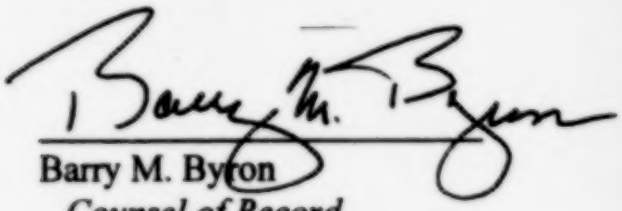
CONCLUSION

This court should affirm the ruling of the lower court. Contrary to Petitioners' allegations, Stratton Codified Ordinance Chapter 116 is a valid exercise of the Village's police power to protect people in their homes from people to whom they do not wish to speak.

No claim of a right of "anonymity" should be used in a way which may jeopardized people in their homes. Unlike public *fora* cases, this case involves competing rights of private individuals; the state, by and through its local governments, has the right and duty to protect people in their homes. Freedoms of speech and religion ought not be used as swords against this primary governmental function, particularly when other *fora* for expression exist.

The judgment of the Sixth Circuit Court of Appeals should be affirmed.

Respectfully submitted,



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In The Supreme Court Of The United States

WATCHTOWER BIBLE AND TRACT SOCIETY OF NEW YORK, INC., et al.,

Petitioners,

v.

VILLAGE OF STRATTON, et al.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF OHIO AND NINE OTHER STATES AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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State v. Steffen,
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INTEREST OF THE *AMICI* STATES

The ten amici States write to urge the Court to affirm the judgment of the court of appeals. State and local governments have a pressing interest in protecting citizens from fraud and other crimes committed by charlatans posing as door-to-door solicitors, and providing that protection is among the chief aims of the local ordinance that the Petitioners have attacked in this case. Many consumer frauds are committed by persons who show up on our doorsteps unidentified and uninvited to peddle goods or services, and more serious offenses – including home burglaries – are often associated with door-to-door solicitation as well.

Solicitor registration and identification requirements like those imposed by the municipal ordinance in this case sensibly protect the safety and privacy of citizens in their homes and on their doorsteps, and this ordinance does so without restricting the content of the messages that door-to-door solicitors communicate. State and local governments should be allowed to adopt solicitor registration and identification requirements if they choose, and because the local ordinance in this case promotes important government interests without restricting the First Amendment rights of the Petitioners or other speakers, the amici States urge the Court to affirm the judgment below.

SUMMARY OF ARGUMENT

The village ordinance challenged in this case – an ordinance that requires all prospective door-to-door solicitors in Stratton, Ohio to secure a permit from the Village's mayor before knocking on any doors – is fully consistent with the First Amendment. That ordinance directs any would-be door-to-door caller to provide his name, address and group affiliation, if any, to the mayor's office. Those who do so "shall be furnished" the permit, according to the ordinance.

The court of appeals, like the district court before it, rejected the Petitioners' First Amendment challenge to the ordinance, and that judgment should be affirmed.

First, the ordinance promotes the significant interests of state and local government officials in protecting their citizens from the considerable risks associated with door-to-door activity. Uninvited, unknown guests on our doorsteps are well-placed to commit fraud or other crimes against people and property, and this particular Village has sensibly concluded that collecting and keeping on file the names and addresses of door-to-door solicitors will help law enforcement officials track down any lawbreakers, and may even deter crime or fraud before it happens.

The home is different than other fora where speakers communicate, for the home is where our privacy and personal security interests are at their highest. Though the First Amendment protects the right of speakers to communicate anonymously, the cases in which the Court has recognized that right involved communication in public places, not on the doorsteps of private homes. When, as in this case, uninvited speakers choose to enter the private property of others to spread a message or to sell a product, the government's insistence that those speakers first provide their names and addresses to village officials does not restrict free-speech interests in the same way as would a similar condition placed on speech on public property.

The Village has not barred door-to-door soliciting, and has not imposed any restrictions on the messages that door-to-door communicants choose to present. The ordinance simply imposes the kind of name-and-address identification requirement that the Court has described favorably in past decisions. And the ordinance appropriately limits the mayor's discretion by limiting the information that he may collect and by directing him to grant a permit without

charge to all applicants who provide that information. Moreover, the ordinance affects only door-to-door communication, thereby leaving speakers free to communicate as they choose (whether anonymously or otherwise) in the Village's public spaces.

Whether analyzed as a time, place and manner regulation, or as a regulation of symbolic expression, the Stratton ordinance does not restrict speech rights of the Petitioners or others. The ordinance compels uninvited door-to-door speakers to first identify themselves to the mayor, and then to carry a permit, but given that those speakers choose to communicate in a way that takes them onto the private property of Village residents, and given the Village's legitimate and pressing interest in protecting residents from crime, fraud and annoyance in their homes, the ordinance passes the relevant tests. The Village's identification requirement for door-to-door solicitors is viewpoint-neutral, is no greater than necessary to promote the Village's interest in protecting residents from the potential dangers posed by uninvited and unknown strangers on the doorstep, and leaves open other fora for the kind of anonymous speech that the Petitioners hope to deliver. The judgment of the court of appeals should be affirmed.

ARGUMENT

I. State And Local Government Officials Are Rightly Concerned About The Crime And Fraud Associated With Door-To-Door Solicitation.

Though the Petitioners in this case no doubt engage in door-to-door communication with the noblest of motives, the fact remains that door-to-door solicitors are not always honest or trustworthy. And when an uninvited visitor commits fraud or worse on the doorstep or inside the home of

a vulnerable resident, that mysterious visitor is often hard to identify and prosecute because he can disappear just as quickly and anonymously as he arrived. Solicitor registration and identification requirements like those in this case can help residents and local law enforcement officers identify any wrongdoers after the fact, and may actually prevent some planned in-home crimes or rip-off schemes in the first place. By doing so, those regulations can serve an important role in crime detection and prevention in our communities.

Citizens often turn to state and, particularly, local government officials with concerns about door-to-door solicitors. The Consumer Protection Section of the Ohio Attorney General's Office alone has received 685 complaints from Ohio citizens regarding fraudulent schemes associated with door-to-door solicitation activities since 1993.

The targets of door-to-door fraudulent schemes are often ill-prepared to respond appropriately to the clever words of anonymous and uninvited guests at the front door. Helen MacMurray, the former chief of the Consumer Protection Section of the Ohio Attorney General's Office, testified in the trial court that "today's scam artists tend to focus on the most vulnerable populations, and we find those to be senior citizens and people with low education and low income levels." Trial Tr. at 212. See also Consumer Behavior, Experience and Attitudes: A Comparison by Age Groups (Princeton Survey Research Associates, March 1999).

Catching the perpetrators of door-to-door scams is particularly difficult because many of the suspects stay in each city or town so briefly. By the time local residents report the crime or fraud, the scam artists are long gone, and often the victims do not even know the perpetrators' true identities. In the end, delay and identification problems

generally prevent the police from ever catching the offenders. See Defendants' Tr. Ex. 39.

In addition, burglaries and other serious crimes are often perpetrated by those posing as door-to-door solicitors. Numerous news articles tell the tale. Jaxon Van Derbeken, *98-Year-Old Latest Victim In Series Of Home Invasions*, San Francisco Chronicle, Sept. 13, 2000 at A18 (man soliciting gardening jobs door-to-door was invading homes, tying up elderly residents and robbing them); Brenda Ingersoll, *Sex Crime Suspect Traveled With Church Group*, Wisc. State Journal, Feb. 19, 2000 at 1B (describing sexual assaults committed by a man going door-to-door purportedly on behalf of a church group); Kristi E. Swartz, *Fake Jehovah's Witnesses Steal Woman's $600*, Durham Herald-Sun, Jan. 5, 1999 at C1 (describing burglary perpetrated by a couple claiming to be Jehovah's Witnesses); Polly Ross Hughes, *Vacuum Cleaners' Maker Held Liable For Rape Damages*, Houston Chronicle, Jan. 1, 1999 at A33 (door-to-door vacuum cleaner salesman committed a rape); *Residents Warned Of Sales Incidents*, Orlando Sentinel, October 15, 1998 at B2 (door-to-door salesman casing homes for burglaries).

The connection between door-to-door activity and crime is evident in court decisions as well. See, e.g., *State v. Manis*, 2000 Ohio App. LEXIS 3298 (Ohio App., 12th Dist. 2000) (door-to-door meat and seafood salespersons burglarized a home while one co-defendant provided cover by continuing to sell meat to the victim); *State v. Huda*, 1994 Ohio App. LEXIS 4490 (Ohio App., 8th Dist. 1994) (home burglary scam); *State v. Steffen*, 509 N.E.2d 383 (Ohio 1987) (a door-to-door salesman stuffed a cleaning rag into a victim's mouth, struck her repeatedly, cut her throat and raped her), *cert. denied*, 485 U.S. 916 (1988).

According to the FBI, 88,636 burglaries were reported in Ohio in the year 2000, and 2,049,946 were reported around the country. Crime in the United States, FBI Uniform Crime Reports 2000 ("2000 Crime Reports") at 81 and 114. Two out of every three burglars struck homes rather than commercial buildings. *Id.* at 42 and 114. Nationwide, 67% of all burglaries involved forcible entry, and over half (61%) occurred during daylight hours. *Id.* at 42.

But while there were 10.2 million theft and burglary offenses reported in the United States in the year 2000, all of those reports resulted in only 1.6 million arrests. 2000 Crime Reports at 9 and 39. Statistics collected at the state level tell the same story. According to the Ohio Office of Criminal Justice Statistics, there were only 5,706 arrests for burglaries in Ohio in 1999, although over 90,000 such crimes were reported.

In short, uninvited door-to-door speech by anonymous strangers can pose considerable risks to vulnerable citizens. One sensible way for state and local governments to protect the privacy and safety of citizens is to do what the small Ohio village of Stratton has done in this case: require any door-to-door solicitors to identify themselves and to register with the mayor's office before knocking on doors. The Village's leaders have sensibly concluded that this measure – one that does not turn on the message that any given solicitor hopes to convey to the Village's residents – will boost the safety of citizens and will help local law enforcement officers catch (if not deter) any solicitors who aim to perpetrate scams or outright crimes at the homes of local residents.

II. The Village's Door-To-Door Regulations Strike The Right Balance Between Government's Concerns About The Safety And Privacy Of Homeowners On The One Hand And The Interests Of Speakers In Communicating Their Messages On The Other.

A. Our Homes Are Not Like The Other Venues Where Speakers Spread Their Messages In Person.

The Court has repeatedly held that the government's interest "in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society." *Frisby v. Schultz*, 487 U.S. 474, 484 (1988), quoting *Carey v. Brown*, 447 U.S. 455, 471 (1980). Several times, the Court has noted "the unique nature of the home," describing it as "'the last citadel of the tired, the weary, and the sick.'" *Frisby*, 487 U.S. at 484, quoting *Gregory v. Chicago*, 394 U.S. 111, 125 (1969) (Black J., concurring). And the home is "the one retreat to which men and women can repair to escape from the tribulations of their daily pursuits." *Frisby*, 487 U.S. at 484, quoting *Carey*, 447 U.S. at 471.

An "important aspect of residential privacy is protection of the unwilling listener." *Frisby*, 487 U.S. at 484. While circumstances necessarily force all of us to encounter unwelcome speech in public places on occasion, the home is different. "That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech . . . does not mean we must be captives everywhere." *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 738 (1970). "[I]ndividuals are not required to welcome unwanted speech into their own homes and . . . the government may protect this freedom." *Frisby*, 487 U.S. at 485 (upholding ordinance restricting picketing of home), citing *FCC v. Pacifica*

Foundation, 438 U.S. 726, 748-49 (1978) (offensive radio broadcasts); *Rowan*, 397 U.S. at 738 (offensive mailings); *Kovacs v. Cooper*, 336 U.S. 77, 86-87 (1949) (sound trucks).

Indeed, the Court has held that private property owners, even those who invite the public on their premises for commercial purposes, may forbid First Amendment activities that are not related to the commercial purposes of the property. *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972); *Cf. PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980) (state constitution may permissibly require private shopping center to allow First Amendment activity).

To be sure, the Court has held that citizens enjoy a right to distribute anonymous election-related pamphlets and publications. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995); *Talley v. California*, 362 U.S. 60 (1960). Both *McIntyre* and *Talley* noted the longstanding American tradition of citizens publishing anonymous political tracts, including the Federalist Papers, the Anti-Federalist Papers, and the work of a "pre-Revolutionary War English pamphleteer 'Junius,' whose identity remains a mystery." *McIntyre*, 514 U.S. at 343 n.6. And the Court has held unconstitutional a requirement that a political canvasser wear a badge with his or her name on it. *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182, 200 (1999). Underlying each of those decisions is the Court's sensible conclusion that the First Amendment protects the right of those espousing unpopular or anti-government opinions to speak out anonymously in public places without fear of government reprisal against them. *McIntyre*, 514 U.S. at 342-44.

In addition, there are "times and circumstances when States . . . [may] not compel members of groups engaged in the dissemination of ideas to be publicly identified." *Talley*, 362 U.S. at 65. See, e.g., *Bates v. Little Rock*, 361 U.S. 516,

523 (1960) (State could not enforce occupational license tax requirement to compel disclosure of the membership list of an organization not subject to the tax); *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 462 (1958) (right to free association prevented State from compelling disclosure of membership lists of advocacy groups, particularly those "espous[ing] dissident beliefs").

But unlike those who anonymously publish pamphlets for distribution in public places, or those who maintain the membership lists of private groups, or those who seek signatures or ask for other expressions of support for unpopular causes in public fora, door-to-door solicitors enter the private property of the listener. No one has a constitutional right to enter the property of others anonymously for any reason, whether it be to commit crimes, to sell commercial products, to collect money for charity, to distribute pamphlets or even just to share ideas. The Court has said as much already. See *Hynes v. Mayor and Council of Oradell*, 425 U.S. 610, 619 (1976) ("There is, of course, no absolute right under the Federal Constitution to enter on the private premises of another and knock on a door for any purpose, and the police power permits reasonable regulation for public safety."). Indeed "[o]f all the methods of spreading unpopular ideas, house-to-house canvassing seems the least entitled to extensive protection." *Id.* (parentheses and citation omitted).

That is so not only because of the significant respect given to private property in this country, but also because of the importance of the personal security and privacy that our homes afford us. "[H]ome is one place where a man ought to be able to shut himself up in his own ideas if he desires." *Hynes*, 425 U.S. at 619 (citation omitted). Door-to-door solicitation involves quite the opposite: a homeowner's forced personal encounter on his property with an uninvited guest. And it sometimes brings with it the kind of "persistent

importunity, following and dogging" that is at best bothersome and at worst frightening or even dangerous "after an offer to communicate has been declined." *Hill v. Colorado*, 530 U.S. 703, 718 (2000) (citation and quotations omitted). Even speech directed from a public area toward a private home may be banned. See *Frisby v. Schultz*, 487 U.S. 474 (1988) (upholding a ban on residential picketing aimed at a particular home).

Thus, while the Petitioners and others surely enjoy the very important right to express their views openly (and anonymously, if they choose) in public places, government is entitled to balance that right against the interests of homeowners once the Petitioners or other speakers choose to carry their messages to the private doorsteps of individual citizens. Whatever interest a speaker may hold in maintaining his anonymity, when he chooses to tread uninvited on the private property of others, the government is entitled, in light of citizens' legitimate safety and privacy concerns, to demand that the speaker publicly reveal his identity before he sets foot on others' private property.

B. The Requirement That Door-To-Door Solicitors Disclose Their Names And Addresses Is Consistent With This Court's Precedents.

Without an identification requirement like the one in this case, which includes a provision allowing each resident to demand that any uninvited guest provide proof of his identity, homeowners and the municipality in which they live would lose one of their key tools in responding to the often unwelcome and sometimes criminally dangerous overtures of door-to-door solicitors. This Village's insistence that those who intend to travel uninvited onto the property of others may do so only after providing their names to Village officials is a minimally intrusive measure that helps protect

Village residents from charlatans and criminals while still preserving the speech rights of those who choose to sell their wares or spread their messages by knocking on doors.

Though the Court nearly 60 years ago narrowly rejected another Ohio municipal ordinance that forbid door-to-door solicitors from knocking on doors or ringing doorbells while distributing handbills, the Court at the same time spoke favorably about the kind of identification requirement that is at issue in this latest case. See *Martin v. Struthers*, 319 U.S. 141, 148 (1943) ("A city can punish those who call at a home in defiance of the previously expressed will of the occupant and, in addition, can by identification devices control the abuse of the privilege by criminals posing as canvassers.").

In other door-to-door cases, the Court "has consistently recognized a municipality's power to protect its citizens from crime and undue annoyance by regulating soliciting and canvassing." *Hynes*, 425 U.S. at 616-17. *See Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) ("Without doubt a State may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent."); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 636 (1980) (acknowledging that the government's interest in protecting the public from the "fraud, crime and undue annoyance" associated with door-to-door solicitation is "substantial").

Of course, any canvasser-identification requirement like that described approvingly in *Cantwell* and *Martin* must avoid the pitfall common to most of the other door-to-door regulations that the Court has examined: delegation of excessive discretion to a government official. The Stratton ordinance satisfies that key standard, for it delegates no

discretion at all to Village officials. Anyone registering "shall be furnished" a permit. Ord. § 116.04. As the court of appeals explained, "there is little room for [the Mayor] to make any decision once the applicant completes the Registration Form," 240 F.3d 553, 568, since the permit can be denied only if the prospective solicitor fails to provide objectively verifiable information, such as his name, address, and affiliated employer or organization. Ord. § 116.03(b). The same requirements and permit-approval standards apply regardless of the speaker's affiliation or proposed message. Because "perfect clarity and precise guidance" in the language of the permitting standards is not required, *Ward v. Rock Against Racism*, 491 U.S. 781, 794 (1989), it is enough that the ordinance contain "neutral criteria to insure that the licensing decision is not based on the content or viewpoint of the speech being considered." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 760 (1988). The Stratton ordinance contains those neutral criteria.

Certainly if the mayor either demanded additional burdensome information from particular permit applicants or if he denied a permit to an applicant who had complied with the registration requirement as defined in the Village ordinance, the affected applicant could raise an as-applied challenge to the provision. Yet on its face, the ordinance contemplates an automatic permit grant to those who comply with the registration requirement, and Petitioners point to no arbitrariness or uneven enforcement of that requirement in their own or in any other individual cases.

C. Stratton's Identification Requirement For Door-To-Door Solicitors Reasonably Promotes The Village's Legitimate Interests In Crime Prevention And Homeowner Safety While Still Preserving Other Avenues For Anonymous Speech.

In addition, the Stratton ordinance addresses the *Martin* concern that the State "leave[] to each householder the full right to decide whether he will receive strangers as visitors . . . ." 319 U.S. at 147. The *Martin* Court described approvingly a model municipal regulation of the 1940s that – like the ordinance in this case – "would make it an offense for any person to ring the bell of a householder who has appropriately indicated that he is unwilling to be disturbed." 319 U.S. at 148. See also *Rowan v. United States Post Office Dept.*, 397 U.S. 728, 737 (1970) (a mailer's right to communicate is circumscribed by the recipient's right to give notice that he wishes no further mailings); *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114, 129-30 (1981) (rejecting a First Amendment challenge to a federal statute barring the depositing of unstamped material in recipients' mail boxes).

Stratton's ordinance specifically allows the householder to inform a potential canvasser that solicitation is unwanted at that householder's address by filing a "No Solicitation Registration Form" with the Mayor's office, and posting a "No Solicitation" sign on his property. Ord. § 116.07. The canvasser is thereby put on specific notice as to which householders wish him to stay away.

Though Petitioners claim that the ability of Village residents to post "No Solicitation" signs ought to be enough to protect any privacy or security interests at stake without the additional need for enforcement of the Village's identification requirement for solicitors, their view misses the

mark. For those Village residents willing to welcome some but not all door-to-door callers, a blanket "No Solicitation" sign paints with too broad a brush. And whether a homeowner is one who welcomes all comers or is instead one who has expressed to the mayor's office a willingness to welcome some door-to-door knockers but not others, the homeowner who has not posted a "No Solicitation" sign can still, in light of the Village's solicitor identification requirement, feel protected from some of the dangers that homeowners elsewhere face when a mysterious solicitor comes calling.

The Village is entitled to try to give its residents that small measure of comfort and confidence that comes with the knowledge that any unwelcome callers are registered with the mayor s office. If anything goes wrong while the uninvited visitor is on the resident's property, or if the owner just feels afraid while talking to the strange visitor on his doorstep, that homeowner in this Village can ask to see the visitor's permit – not an unreasonable request, given that the guest has presumably arrived unannounced and uninvited on the property of another – and then take whatever action the homeowner thinks best. The identification requirement also allows the homeowner to turn away those speakers whom he does not wish to hear, thereby advancing the Village's legitimate interest in helping residents minimize unwanted at-home annoyances. And after the solicitor leaves, a homeowner in this Village can contact the mayor's office to follow up with any complaints about possible fraudulent or criminal conduct by the visitor while on the homeowner's property. With the help of the name and address information on file, Village officials can then track down the mysterious caller much more easily than in municipalities without such an ordinance.

Finally, and most importantly, numerous alternate fora are available for anonymous speech in Stratton. All the

cases in which anonymous speech has been held inviolable have one thing in common: if upheld, the challenged law in those cases would have left the speaker with no alternate means of anonymous communication. In *McIntyre* and *Talley*, the speakers were engaged in the most basic and one of the least expensive of First Amendment activities – distributing pamphlets. If required to identify themselves while pamphleteering in a public forum, the speakers in those cases would have had no realistic alternate forum for anonymous speech. The same was true of the badge requirement struck down in *Buckley* and the membership-disclosure measure in *N.A.A.C.P. v. Alabama*.

This case is markedly different, since the Stratton ordinance says not a word about speech – whether anonymous or not – in any location other than the private doorsteps of Village residents. Persons or organizations wishing to engage in anonymous speech enjoy the same wide range of public-forum possibilities in this Village as they do in any other. They can produce and distribute anonymous literature, and a speaker or pamphleteer can remain anonymous on a sidewalk, in a public park or in any other traditional or designated public forum in Stratton. The only thing that prospective anonymous speakers cannot do is enter the private property of Village residents. Yet nothing in the First Amendment's long history suggests that the Petitioners or any other anonymous speakers can demand access to private property in the same unrestricted way that they can to public areas.

III. The Door-To-Door Regulations In This Case Satisfy The Court's Tests For Permissible Restrictions On Expressive Conduct, As Well As Restrictions On The Time, Place And Manner Of Speech.

Whether analyzed under the test for symbolic conduct or under the "intermediate" time, place and manner standard that the court of appeals applied, Stratton's ordinance does not run afoul of the First Amendment. To satisfy the time, place and manner standard, the Village must of course show that its ordinance is content-neutral and narrowly tailored to promote rational interests in preventing fraud and in protecting local residents. And under the test for symbolic expression, the regulation is valid if it is narrowly drawn to further a substantial governmental interest, and if it is not aimed at limiting free speech. This ordinance meets either test.

The Village's insistence that door-to-door solicitors disclose their identities does of course satisfy the kind of intermediate time, place and manner standard that the court of appeals applied. Like the regulation in *Hill v. Colorado*, the challenged ordinance is "not a 'regulation of speech'" itself. *Hill*, 530 U.S. 703, 719 (2000). "Rather, it is a regulation of the places where some speech may occur," *id.*, for the Village has essentially confined anonymous speakers to all available sites other than the doorsteps of Village residents.

The Court in *Hill* let stand a state statute requiring an 8-foot "bubble" around patrons of health clinics to protect them from direct physical confrontation with "sidewalk counselors," who were primarily protesting abortions. As in *Hill*, the Court has repeatedly upheld time, place and manner restrictions on speech in public fora or on government property, see, e.g., *City Council v. Taxpayers for Vincent*,

466 U.S. 789 (1984) (signs on public property); *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37 (1983) (mail slots for teachers at a public school), suggesting all the more that Stratton's regulation affecting conduct on the *private property* of Village residents is a reasonable measure that comports with the First Amendment.

And because the Village's door-to-door restriction regulates not speech but conduct – the act of entering onto the private property of others, regardless of the speaker's intended message – the Court's test for symbolic expression likewise poses no bar to the door-to-door restriction in this case. That test – one that "is little, if any, different from the [intermediate] standard applied to time, place, or manner restrictions," *Clark v. Community For Creative Non-Violence*, 468 U.S. 288, 298 (1984) – fits these facts well.

Indeed, this case is an easier one than *United States v. O'Brien*, 391 U.S. 367 (1968), or several of the Court's other symbolic expression cases, for the act of going door-to-door is not even conduct bound up with the kind of "symbolic speech" that the Court has recognized in previous cases. See, e.g., *Texas v. Johnson*, 491 U.S. 397 (1989) (flag burning); *Cohen v. California*, 403 U.S. 15 (1971) ("scurrilous epithet" on jacket). Door-to-door communication is merely the mechanism by which a person or organization disseminates its views – not an expression of those views themselves.

Under the *O'Brien* approach for conduct that combines speech and "nonspeech" elements, government regulation of that conduct is permissible under the First Amendment if the regulation (1) is within the constitutional power of the government, (2) furthers an important or substantial governmental interest that is unrelated to the suppression of free expression, and (3) is no greater than necessary to further that interest. 391 U.S. at 376, 377.

That test – one that gives the government considerable latitude to regulate conduct that carries some "alleged communicative element," *O'Brien*, 391 U.S. at 376 – provides a sensible approach for analyzing the kind of government regulation of conduct on private property that is at issue in this case. The Stratton ordinance says not a word about the things that door-to-door speakers may say or not say, but it does require that any door-to-door solicitors carry a Village-issued permit and be prepared to identify themselves to any residents onto whose property the solicitors enter. The ordinance, in short, regulates solicitors' methods but not their message. The fact that the affected solicitors choose to communicate their views in a way that necessarily carries them onto the most private space of each listener surely justifies the lightest of burdens on the government in justifying its regulation, at least where, as in this case, the regulation neither bars door-to-door soliciting nor turns on the views that any given speaker expresses.

Stratton's ordinance, including its identification requirement, easily passes the *O'Brien* test. The government certainly has the power to protect citizens against invasions to their privacy and safety in their own homes. The ordinance, including the identification requirement, surely furthers the interest of the Village in protecting its citizens from unwanted intrusion and criminal activity, and that interest has everything to do with public safety and nothing to do with free expression, as is made clear by the Village's policy of distributing door-to-door permits at no charge to all applicants regardless of their intended messages, as long as they supply a name and basic identifying information. And finally, even if the identification requirement imposes an incidental restriction on First Amendment freedoms, that restriction – one that permits door-to-door speakers to spread their message as they choose as long as they reveal their identities – is no greater than necessary to further the Village's interest in protecting local residents from the risks

associated with anonymous door-to-door scam artists and criminals.

Even the *O'Brien* standard may impose too tough a test on the government in cases like this, since Stratton's regulation affects only activity on private property, where surely the speaker's interests pale in comparison to those of individual homeowners and of the local government officials who are charged with protecting local residents' safety. But surely under *O'Brien* or under the very similar time, place and manner standard applied by the court of appeals, the ordinance in this case meets the test, for the Village's requirement that all door-to-door solicitors identify themselves and register with the mayor leaves all of them free to speak their messages on the private doorsteps of Village residents without restraint, and leaves all public fora open for the kind of anonymous speech that was at issue in *McIntyre*.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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